Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

GABE KAIMOWITZ, Petitioner
v.
STATE OF FLORIDA, et al, Respondent(s),

GABE KAIMOWITZ, Petitioner
v.
UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA, Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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163 pp

QUESTIONS PRESENTED FOR REVIEW

1. Did the Eleventh Circuit in consolidated appeals correctly affirm, without explanation or hearing, orders entered by the U.S. District Court for the Northern District of Florida, (1) denying preliminary injunctive relief without explanation or hearing, and then, pursuant to local rule only, (2) dismissing and closing an age discrimination case without meaningful opportunity to be heard, months before any finding of contempt was made, or other sanction imposed?

2. Did the Eleventh Circuit correctly dismiss petitions for writs of mandamus sought to allow an attorney duly licensed in Florida to proceed on behalf of himself and/or others without a requisite counter-signature of a district court member for each paper filed in any action in any of its three divisions, pursuant to an indefinite sanction ordered in a case by the U.S. District Court for the Northern District of Florida?

PARTIES

This petition for writ of certiorari is on behalf of an attorney ("Gabe Kaimowitz" or "Kaimowitz" or "Petitioner" or "this attorney") who proceeded *pro se* below in 1994 pursuant to federal and state claims of age discrimination and retaliation against the State of Florida. He later identified several of its boards and agencies as parties in a First Amended Complaint in 1995, (here, as "The State" or "Florida"). The specific agencies are the State of Florida Board of Regents, Department of Juvenile Justice, Florida Department of Community Affairs, Florida Department of Corrections, Florida Department of Environmental Regulation, Florida Department of Health and Rehabilitative Services, Florida Department of Labor and Employment Security, Florida Department of Natural Resources, Florida Department of Legal Affairs, Florida Department of Professional Regulation, Florida Department of Revenue, and the Florida Department of Transportation.

After dismissing that action in 1996, the Honorable Maurice M. Paul, then chief judge of the United States District Court for the Northern District of Florida, on Jan. 17, 1997, required Petitioner to obtain the counter-signature of a member of his court, who of necessity is a member of the Florida Bar, for each filing in each action on behalf of himself or others in any of the divisions in that jurist's domain. The Honorable Roger Vinson, successor chief judge, on Aug. 22, 1997, required that counter-signature pursuant to Judge Paul's order, in a separate action filed by Petitioner against the Supreme Court of Florida and the Florida Bar. In granting an enlargement of time for the filing of this petition from dismissal of those separate requests for writs of mandamus, United States Supreme Court Justice Anthony Kennedy noted **the United States District Court for the Northern District of Florida** thus is a designated party.

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PETITION FOR A WRIT OF CERTIORARI

The petitioner, Gabe Kaimowitz, respectfully prays that a writ of certiorari issue to review the judgment and orders of the United States Court of Appeals for the Eleventh Circuit entered on Feb. 11 and Apr. 8, 1998, in *Gabe Kaimowitz v. State of Florida, et al.* Also to be reviewed are orders of the Eleventh Circuit, which declined to grant or reconsider separate petitions for writs of mandamus or to permit an *en banc* suggestion on the underlying controversy on Feb. 26, 1998.

CITATIONS BELOW

All of the relevant rulings below are unpublished and/or unreported. On Aug. 29, 1996, the United States Court of Appeals for the Eleventh Circuit ("Eleventh Circuit" or "The Appeals Court") *sua sponte* consolidated appeals in *Kaimowitz v. State of Florida, et al.*, CA-#94-10061-MMP (N.D. Fla. 1994)(Gainesville Division), from orders of denial of preliminary injunctive relief on Mar. 1, 1996, (#96-2478) and dismissal and closing of the case on July 29, 1996, (#96-3116). The consolidation is set out in the Appendix to this court at p. (50-a). **(Similar references herein are to the Appendix.)**

The Eleventh Circuit affirmed the lower court's orders without opinion on February 11, 1998 (6-a/7-a). The Appeals Court denied a suggestion for rehearing *en banc* and for rehearing in those appeals Apr. 8, 1998 (4-a/5-a). The Eleventh Circuit first dismissed a petition for writ of mandamus arising therefrom on Oct. 10, 1997 (#97-2211)(100-a).

The Appeals Court at that time also denied a motion to recuse all Florida Bar member judges from acting on that petition (100-a). While that judicial disqualification motion was pending, Florida Bar member Eleventh Circuit Judge Susan Black construed a Notice of Amended Appeal as a request to supplement the record up to and including an Order of Jan. 17, 1997 (16-a/18-a). On Aug. 5, she denied that request and instructed briefing to begin in #97-3116 (96-a).

On Oct. 20, 1997, after that petition for writ of mandamus had been dismissed, another Eleventh Circuit judge denied consolidation of that petition with the aforementioned appeals (101-a). When that petition was dismissed on Oct. 10, Petitioner was notified a second petition for writ of mandamus still remained unresolved (#97-3110)(99-a).

That second petition arose from an Aug. 22, 1997 Order in a related case in the district's Tallahassee Division (19-a). Each was premised on that order of Jan. 17, 1997 (16-a/18-a) by the Chief Judge in the U.S. District Court for the Northern District of Florida ("Northern District"). In that Jan. 17 Order, the Chief Judge directed Petitioner to obtain a counter-signature of a Northern District member of the Florida Bar for every filing in every case there until further order of the Court.

In the age discrimination action, the Chief Judge earlier had denied preliminary injunctive relief to Petitioner without argument or explanation on Mar. 1, 1996 (8-a) and then on Sept. 12, 1996, (1) dismissed the substantive claims of age discrimination in employment, on the basis of a local rule, (2) directed closing of the case and (3) ordered Petitioner to show cause why he should not be held in contempt (9-a\12-a).

The Chief Judge discharged the Order to Show Cause on Oct. 16, 1996 (13-a/15-a) after Petitioner defended his papers with a submission from an English language expert (105-a\106-a) who opined they did not appear to violate the language of an earlier bench order (40-a\42-a) viewed in the light of the Show Cause Order of Sept. 12 (9-a\12-a). However, post-dismissal motions and colloquy at a November 26, 1996 hearing so displeased the Chief Judge that on Dec. 3, 1996 he again ordered Petitioner to show cause why he should not be held in contempt (58-a\61-a). After hearing on Dec. 17, (63-a\74-a), the Chief Judge found Petitioner to be in contempt in the Jan. 17, 1997 Order, and sanctioned him.

The sanction imposed was the counter-signature requirement. On Apr. 24, 1997, the Chief Judge refused to modify that order (76-a). Such modification was sought to allow Petitioner to sue the Florida Bar without a counter-signature from one of its members before he could proceed.

JURISDICTION

The judgment of the Eleventh Circuit affirming a district court denial of preliminary relief and later dismissal of the case was entered on Feb. 11, 1998 (6-a\7-a). A petition for rehearing and suggestion *en banc* of the affirmance in the consolidated cases was denied on Apr. 8, 1998 (4-a\5-a). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

Further, pursuant to that provision and to 28 U.S.C. §1651, the jurisdiction of this Court is invoked to hear dismissals of two petitions for writs of mandamus. Petitioner seeks below and here to bar enforcement of orders in the United States Court for the Northern District of Florida requiring him to obtain a counter-signature of a member of that court for each filing in each case he brought for himself or others. As noted, *supra*, the Eleventh Circuit dismissed the first on Oct. 20, 1997, and denied reconsideration on Feb. 26, 1998. Also as noted, id., The Eleventh Circuit dismissed the second and denied a suggestion for rehearing *en banc* on the issue of the counter-signature, also on Feb. 26, 1998.

On May 18, 1998, with regard to the first, and on May 19, with regard to the second, Justice Anthony Kennedy entered orders extending the time for filing a petition from the dismissals of the applications for writs of mandamus by the Eleventh Circuit to June 12, 1998 (113 -a\116-a).

The petition for writ of certiorari here also is premised on exceptional circumstances arising from the underlying civil action separately dismissed to sanction Petitioner. Consequently, it will aid this Court in its appellate jurisdiction to consider the petitions together, which arise from related cases. *See* S. Ct. R. 12.2; *cf.*S. Ct. R. 20.1.

CONSTITUTIONAL PROVISIONS, STATUTES, RULES INVOLVED

The First Amendment to the United States Constitution provides in pertinent part:

Congress shall make no law...abridging the freedom of speech...or the right of the people peaceably to assemble and to petition the Government for a redress of grievances.

The Fifth Amendment to the United States Constitution provides in pertinent part:

No persons shall...be deprived of life, liberty or property without due process of law....

The Fourteenth Amendment to the United States Constitution provides in pertinent part:

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 455 of 28 U.S.C. provides in pertinent part:

Disqualification of justice, judge, or magistrate

(a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(b) He shall also disqualify himself in the following circumstances:

(1) Where he has a personal bias or prejudice concerning a party....

(4) He knows that he, individually...has a financial interest in the subject matter in controversy...or any other interest that could be substantially affected by the outcome of the proceeding;

(d) "financial interest" means ownership of a legal or equitable interest, however small....

Section 1292 of 28 U.S.C. provides in pertinent part:

Interlocutory decisions. (a) Except as provided in subsections (c) and (d) of this section, the courts of appeals shall have jurisdiction of appeals from:

(1) Interlocutory orders of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, or of judges thereof, granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions, except where a direct review may be had in the Supreme Court;....

Rule 15 of the F.R.Civ.P. provides in pertinent part:

Amended and Supplemental Pleadings

(a) Amendments. A party may amend his pleading once as a matter of course at any time before a responsive pleading is served....Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires....

Rule 65 of the F.R.Civ.P. provides in pertinent part:

(a) Preliminary Injunction. (1) *Notice.* No preliminary injunction shall be issued without notice to the adverse party. (2) *Consolidation of Hearing With Trial on Merits.* Before or after the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application....

—

Local Rules, Court for the Northern District of Florida, effective April 1, 1995, as amended through 1997, **RULE 11. 1 ATTORNEYS**, provides in pertinent part:

(A) Qualification for Admission. An attorney is qualified for admission to the bar of this district if the attorney: (1) is currently a member in good standing of The Florida Bar;

....**(C) Retention of Membership in the Bar of This Court**. To maintain good standing in this district, the attorney must remain an active member in good standing of The Florida Bar and must comply with all requirements imposed upon members of The Florida Bar.

—

Local Rules, Court for the Northern District of Florida, effective April 1, 1995, as amended through 1997, **RULE 16.1 SCHEDULING ORDERS** provides:

(A) In order to set out the parameters of discovery at the earliest opportunity, an initial scheduling order will be entered in civil cases as soon as at least one of the defendants has appeared, but in no event later than the times set out in Rule 16(b)(Federal Rules of Civil Procedure ["F.R.Civ.P."].)

(**A**)(cont.) Upon consideration of the parties' joint report filed in accordance with Rule 26(f), Fed.R.Civ.P., or after consultation with the parties, the court may modify the initial scheduling order, as appropriate, or continue the initial scheduling order, so that a final scheduling order will be in effect as contemplated by Fed.R.Civ.P.16(b).

(**B**) Magistrate judges of this court may enter and modify scheduling orders in cases assigned to them by consent, in all cases referred to them by a district judge, and in all cases in which they conduct the Fed.R.Civ.P. 16(b) scheduling conference.

(**C**) Except as otherwise ordered by a judge of the court in a particular case, a scheduling order need not be entered in the categories of actions exempted under N.D. Fla. Loc. R. 26.1.

Local Rules, Court for the Northern District of Florida, effective April 1, 1995, as amended through 1997, **RULE 41.1, DISMISSAL FOR FAILURE...TO COMPLY WITH THE RULES OR A COURT ORDER,** provides in pertinent part:

(**B**) On motion of any party or on its own motion, the court may enter an order to show cause why a claim, counterclaim, cross claim, or defense should not be dismissed for failure to comply with these rules, the Federal Rules of Civil Procedure, or a court order. If good cause is not shown, a dismissal may be entered for this reason.

STATEMENT OF THE CASE

Petitioner, an attorney continuously in good standing in various state and federal bars since his first admission to practice law in 1969, filed an action in which he alleged that the State of Florida, ("the State" or "Florida") through at least 11 of its boards and agencies, denied him employment opportunities available to qualified lawyers or law graduates.

The action filed on Apr. 17, 1994, alleged that such opportunities had been denied unlawfully because of his age. since Jan. 1, 1992. The initial pleading alleged both discrimination and retaliation claims arising under applicable federal and state laws after Petitioner received a requisite Right to Sue letter from the U.S. Equal Employment Opportunity Commission. In response on Aug. 5, 1994, Florida claimed that it was immune from suit in federal court, but, assuming *arguendo* that was not so as a matter of law, the State could hire less experienced attorneys as a cost-saving device. That justification was not repeated thereafter.

Thereafter, for the first two years, an assigned Magistrate Judge, supported by the Chief Judge at all times, did not apply federal or local rules of civil procedure with regard to scheduling or discovery. The Magistrate twice rejected Petitioner's motions for application of such standard procedures until the jurists could decide whether Florida and/or its agencies were immune from suit as alleged by the State.

In 1995, no evidentiary hearing or oral argument was allowed on any matter, including (1) a report and recommendation of dismissal on grounds of Eleventh Amendment immunity; (2) earlier papers for recusal of the Magistrate after Petitioner's discovery that the jurist had a vested interest in the State's retirement program for former employees; (3) the Chief Judge's referral to the Magistrate of that pending judicial disqualification motion; (4) the Chief Judge's entry of judgment; (5) the Magistrate's *sua sponte* report and recommendation to reopen the action, because Petitioner had filed a timely First Amended Complaint as of right, which had been improperly construed and denied as an application for leave to file; and (6) a second agreement with the State to bar any discovery or scheduling until the immunity issue was resolved as a matter of law.

In 1996, Petitioner sought preliminary injunctive relief to assure availability of one of eight senior attorney positions advertised simultaneously by a fledgling defendant Department of Juvenile Justice, until the merits of the action were resolved. Petitioner had extensive practical and legal writing experience in that field in Florida and in Michigan. By then 60 years old, Petitioner would be irreparably harmed, even if he eventually prevailed on the merits, if no attorney vacancy existed for which he was qualified.

Award of damages would not compensate at his age for the premature conclusion of his employment history. Petitioner had entered the field of law after a decade of experience as a journalist. He primarily sought to make a contribution as an attorney in public law after his graduation from New York University School of Law in 1967. Petitioner in fact had been engaged almost continuously for 20 years in free legal services for the eligible poor and public interest law, until he returned to graduate school for an advanced degree in communications research. His attempt to change fields in his 50's resulted in an action by him in the Seventh Circuit, where he had been allowed to proceed against and settle with a state agency on an ADEA claim, *Kaimowitz v. Board of Trustees of the University of Illinois*, 951 F.2d 765 (7th Cir. 1991).

Florida agencies represented by the Attorney General of Florida never considered settlement. For Florida, Janice Jennings, esq., became the third assistant attorney general in succession assigned to defend the action. She continued to be the State's lower court attorney through 1997 in *Kaimowitz v. State of Florida, supra*. She also defended the Florida Board of Regents, in state court, after Petitioner in a Second Amended Complaint below restricted his claims to the federal causes of action. Petitioner continues to pursue state age discrimination claims against that defendant in state court.

Ms. Jennings also was an assistant attorney general representing that Florida board before Judge Paul in the age discrimination case of *Kimel v. The Florida Board of Regents*, 9 Fla. Law Wkly. Fed. D 791, 1996 U.S. Dist. LEXIS 7995 (May 17, 1996) (108-a) In *Kaimowitz v. State of Florida, supra*, Ms. Jennings opposed the motion for preliminary relief.

On Mar. 1, 1996, the Chief Judge denied that motion without hearing, oral argument, or explanation. In April, he did schedule motions for oral argument, including one to allow Petitioner to withdraw the pendent state law claims without prejudice. They were to be heard on Apr. 30, in Gainesville.

Petitioner without opposition moved for a continuance so that he could take depositions previously scheduled for the last two days of discovery on Apr. 29 and Apr. 30, 115 miles away in Orlando. The Chief Judge granted a "continuance" from Apr. 30 to Apr. 29. Further attempt without opposition to continue the matter was denied by the Chief Judge through his clerk orally on the afternoon of Friday, Apr. 26. Because of the conflict, Petitioner was never able to complete one of the scheduled depositions in a federal False Claim Act action he brought for the United States. The case filed in Jacksonville in 1994 was pending in the Orlando Division, before judge Patricia C. Fawsett.

Judge Fawsett, like the Northern District Chief Judge, had been a partner of J. Thomas Cardwell, at Akerman, Senterfitt, & Eidson, then headquartered in Orlando, Fla.. On a post-dismissal motion in *Kaimowitz v. State of Florida, supra*, Petitioner was able to describe some of the connections between and among the Chief Judge, Judge Fawsett, Petitioner and Cardwell (56a\57-a). Mr. Cardwell, as counsel for the Florida Banking Association is credited by an area daily with the rise of regional intrastate banking in Florida in 1984-85.

Before going on the bench in the Northern District, the Chief Judge was an Orange County, Fla., circuit court judge in Orlando for nearly a decade after years in private practice there. The Chief Judge also had partnered with Bud Eubanks, whose private law firm was defending Orlando in the False Claim Act action being heard by Judge Fawsett.

Judge Fawsett had recused herself three times in the '80's on motions of the Petitioner. The first time Judge Fawsett stepped aside because she had been a partner of Mr. Cardwell. Petitioner was suing him and others, including public officials in Orlando. They were said to have caused termination of Petitioner's employment in 1986 as executive director of Greater Orlando Area Legal Services, Inc. ("GOALS"), a federally-funded legal services program for the eligible poor. Mr. Cardwell was alleged by Petitioner to have been at the center of false challenges made by attorneys for GOALS and several similar programs elsewhere in Florida. First Union National Bank and what is now NationsBank, both of Charlotte, N.C., moved into the State in 1985 to acquire and merge with Florida lending institutions. The quick challenges, and their facile resolutions within weeks, were publicized widely as vehicles to produce millions for the minorities and the poor. Those facile administrative complaints were brought to distract others from pursuing meaningful challenges, with court enforcement if necessary. The lenders agreed in fact to little more than good faith efforts.

In 1991, Petitioner settled with GOALS defendants, including Mr. Cardwell, to his financial satisfaction in his wrongful termination suit. Also in 1991, Petitioner lost a court battle but won a legal war when he showed that at least one of the banks seeking an acquisition in 1989 continued to avoid its lending responsibilities to blacks and the poor, more than four years after the lender had "settled" with GOALS, etc..

See *Kaimowitz v. Bd of Gov. of the Fed. Res.*, 940 F.2d 610, 611 (11th Cir. 1991). The Eleventh Circuit dismissed the administrative complaint for want of standing, because "(w)e fail to understand the sense in which petitioner's reputation has been injured. As we quoted above, the Board specifically found that First Union had been remiss in CRA compliance, id., 612....In our view, the Board upheld petitioner's reputation and credibility by finding that First Union had poorly performed its CRA responsibilities in the past. The Board also recognized that First Union might continue to avoid implementing CRA programs and policies and therefore required monitoring of First Union's future performance," id., 613. Mr. Cardwell represented First Union in Florida at the time. Shortly thereafter he settled in separate local proceedings for the lender to the financial satisfaction of Petitioner's clients; they claimed racial discrimination in home mortgage lending.

That was then. More recently, connections between Mr. Cardwell and the Northern District Chief Judge became clear on June 20, 1996, at a Florida Bar-sponsored panel, moderated by Judge Fawsett, on "The Future of the Federal Judiciary in Florida". Petitioner was present there at a workshop on application of civil procedure in Florida federal district courts moderated by Judge Paul, when Mr. Cardwell stopped by to talk to the jurist. Mr. Cardwell informally introduced Judge Paul as his former "law partner."

Had the Chief Judge and Judge Fawsett communicated about Petitioner, e.g. about the hearing/deposition conflict? Such judicial communication apparently is common in Florida. "Supreme Court Chief Justice Gerald Kogan summed it up:...'Lawyers will talk about judges they appear in front of,' Kogan noted. 'Well, trial and appellate judges, we talk about you and we know the ones who are going to come in and try to pull the wool over our eyes and we know the ones we can trust.

"There is not a single case nor is there a single client that is worth you risking your reputation in the legal community for that client or that case. Once you lose your reputation, you will never get it back,'" G. Blankenship, "Reputations aren't hypothetical, retreat tells lawyers," *The Florida Bar News*, Aug. 1, 1996, p. 1. The "single case" for Petitioner was *Kaimowitz v. The Florida Bar (and the Supreme Court of Florida)*, 996 F.2d 1151 (11th Cir. 1993). For five years, Petitioner tried but ultimately did not prevail on an action to separate himself from the state association. Petitioner sought to continue to practice in Florida federal courts on the basis of his New York license, a privilege denied to him because he has been and continues to be a Florida resident since 1985.

Before the Florida Bar-sponsored symposium, the Chief Judge had taken two significant actions in *Kaimowitz v. the State of Florida, supra*, between the time he scheduled that hearing on various motions for Apr. 29, and his *sua sponte* dismissal and order to show cause three months later. First, the Chief Judge at the hearing he called did not rule on the motions. Instead he ordered the striking of the First Amended Complaint, because of the alleged inclusion of scurrilous statements. "Your pleadings are replete with such matters. For instance you say: (')The primary purpose of an order was solely to protect this biased Court from timely consideration.(') I'm going to give you...20 days to file whatever you want in the way of a statement of claims in the complaint. It better not have anything but legal matters. If you put any such statements in any future pleading, I will cite you for contempt (41- a)."

Petitioner's Second Amended Complaint was timely filed on May 20. In an order of May 2, memorializing the hearing, the Chief Judge threw out all previous papers, though neither the jurist himself, the Magistrate nor Defendants' counsel previously questioned any of the language in them.

Second, on May 17, 1996, in *Kimel v. Florida Board of Regents, supra*, ("*Kimel*") the Chief Judge denied a motion to dismiss a federal Age Discrimination in Employment Act ("ADEA") claim on the basis of Eleventh Amendment immunity. That motion had been made in April, by Ms. Jennings and another assistant attorney general. The Magistrate Judge had not ruled on a comparable motion by the Florida Office of the Attorney General ("AG") in *Kaimowitz v. State of Florida, supra*, before the Chief Judge struck the First Amended Complaint little more than two weeks earlier.

Without mentioning the Chief Judge's denial of the Eleventh Amendment immunity argument, in *Kimel, supra*, only a month earlier, the AG for Defendants in *Kaimowitz v. State of Florida, supra*, on June 17 made that contention its sole defense to the same Chief Judge. Without knowing about *Kimel, supra*, Petitioner still had basis for a NOTICE pursuant to Rule 11, F.R.Civ.P. to demand withdrawal of the motion to dismiss or for summary judgment within 21 days or he would move for sanctions (47-a\48-a).

Ms. Jennings asked Petitioner for enlargement of time to respond. The Chief Judge already had granted her motion for enlargment of time to respond to the pleading, despite the jurist's previous insistence on a tight schedule. Her June 20 motion for enlargment of time also had been granted by the Chief Judge to respond to Petitioner's motion pursuant to 28 U.S.C. § 455(a), for that jurist's recusal. So Petitioner orally agreed to two delays. As he was trying to reach her on a third attempt, Judge Paul entered his Dismissal...on July 29.

Petitioner immediately appealed. While briefing was going on from the appeal for preliminary relief, the Eleventh Circuit on Aug. 29, consolidated the appeals. Below Petitioner still had to show cause why he should not be held in contempt.

When the Chief Judge struck the Second Amended Complaint and dismissed the action without prejudice, he relied on Local Rule 41(B), for the U.S. Court for the Northern District of Florida. That Local Rule on its face would allow such dismissal **only after** a show cause proceeding. But in *Kaimowitz v. State of Florida, supra*, the Chief Judge acted first and asked Petitioner to show cause later. He ordered the case closed, except for proceedings on the Order to Show Cause combined in the already ordered Dismissal. The Dismissal noted that there was a motion pending for recusal of the Chief Judge, (10-a) but no action was taken on that motion.

To resist a contempt finding, Petitioner relied on a language analysis and sworn affidavit by an English professor/socio-linguist who had been his leading white expert in 1979 in a legal action which attracted world-wide attention to educational approaches to the home language of children who primarily spoke black English dialect. The Chief Judge then discharged the Order to Show Cause without further penalty, but made clear that any future attempt by Petitioner to raise the ADEA claims would have to be done in a new action.

On Feb. 11, 1998, the Eleventh Circuit without opinion, pursuant to 11th Cir. Ct. App. R. 36.1, affirmed the orders of the Chief Judge denying preliminary relief and dismissing the action pursuant to the Northern District's Local Rule 41.1 (B), *supra*. The appellate court rule at (e) allows for such decision when an opinion would have no precedential value from a judgment without reversible error, or order(s). The Chief Judge made his orders without entering judgment. On Apr. 8, rehearing and suggestion for rehearing *en banc* were denied. On Feb. 11, the Eleventh Circuit separately also taxed double costs to the Petitioner for having filed these appeals. Both were deemed to be frivolous without opinion. Though Defendants sought attorney fees, that motion was ignored.

Petitioner responded to the motion for attorney fees with copies of orders showing that the AG in the state age discrimination action had just paid him $3,062, for frustrating discovery in *Kaimowitz v. The Florida Board of Regents*, #96-3260-CA (Fla. 8th J.D. Alachua Co. Cir. Ct. 1996). But in the federal system, the ADEA claims and a request for preliminary relief, surely mandating some sort of consideration if meritorious, thus seemingly were sent into oblivion, nearly four years after they were filed. The only basis for that consignment was offered below by the Chief Judge.

That jurist, from Apr. 29, 1996, continued to find language he deemed unacceptable in Petitioner's papers. This offensive language was not discernible to anyone else, yet he believed it to be sufficient to warrant dismissal on July 29 by application of local rule. The Chief Judge did give Petitioner the opportunity to refile, but only by the opening of new action. Petitioner thus could not benefit from an amended pleading relating back to the original (71-a\72-a). Meanwhile, the Eleventh Circuit was reviewing *Kimel*, and other related cases about a state's right to Eleventh Amendment immunity.

From 1995, the Chief Judge would have been aware of *Kimel* and parallel claims of violations of the ADEA by one of the Defendants in *Kaimowitz v. State of Florida, supra*. In 1996, both cases were called to the attention of the Eleventh Circuit on appeals. That *Kimel* decision was called to the Chief Judge's attention by Petitioner repeatedly on Dec. 17, 1996. Petitioner also sought to connect his case and *Kimel* by moving to consolidate his ADEA action, with the appeal brought by the Florida Board of Regents. On Jan. 29, 1997, Eleventh Circuit Judge Phyllis Kravitch denied that consolidation motion (75-a). By then, Petitioner's ADEA claims had been sidetracked in the Northern District. Earlier that month, the Chief Judge did cite Petitioner for contempt.

On Dec. 17, 1996, after Petitioner persisted in trying to preserve the record for appeal from the dismissal by seeking modification of the Chief Judge's orders of Sept. 12 and Oct. 16 closing the case, he again found himself ordered to show cause why he should not be held in contempt. On Dec. 3, based on another judicially-called hearing on Nov. 26, ostensibly to consider a correction, pursuant to Rule 60(b), Federal Rules of Civil Procedure, and Petitioner's request for recusal, the Chief Judge granted the 60(b) motion, denied recusal, without reference to the May motion, and then set the contempt proceedings in motion. The Chief Judge refused to delay that Dec. 17, hearing, (62-a) so that Petitioner could seek counsel and obtain a tape or transcript of the Nov. 26 hearing for that second contempt proceeding.

Without such guidance, Petitioner agreed that inclusion of a reference to recusal in the Rule 60 (b) motion was contrary to prior court orders warranted a finding of contempt (72-a\73-a). On Jan. 17, 1997, as the sanction for the contempt, the Chief Judge imposed the counter-signature requirement. **That sanction gave rise to two petitions for writ of mandamus.** The second petition arose from an action begun in the Northern District after the Chief Judge refused on Apr. 24, 1997, to modify the Jan. 17 decision, so that Petitioner at least could proceed against The Florida Bar for injunctive and declaratory relief without a counter-signature of one of its members.

Petitioner brought the second action, *Kaimowitz v. The Supreme Court of Florida, et al.*, 4:97cv185 RH (RV)(N.D. Fla. 1997) with motions for a TRO and preliminary injunctive relief to bar a Florida Bar disciplinary complaint against him in the state court system. His papers were treated under local rules as if they had been filed by a prisoner or other confined person. The clerk then referred the case to the same Magistrate whose recusal was sought in the ADEA action.

On May 22, 1997, the Magistrate reported that Petitioner did not have the requisite signature and recommended that the action be dismissed and referred to the Chief Judge (79-a/80-a). Apparently the Magistrate did not wait for ruling and referred the papers to the Chief Judge himself. The Chief Judge referenced him as the source when he ordered Petitioner again to show cause on June 19, why he should not be held in contempt in *Kaimowitz v. State of Florida, supra* (85-a/86-a). The Chief Judge specifically excused the AG from appearing. In that case, the June 19 hearing was delayed by the Chief Judge (87-a).

On June 25, at the Show Cause hearing, the Chief Judge referenced both that case and *Kaimowitz v. The Supreme Court of Florida and The Florida Bar, supra.* The Chief Judge made no further finding of contempt. Petitioner had provided a counter-signature, immediately after the Magistrate' adverse recommendation (81-a\83-a). But the Chief Judge made clear he was not through. The Chief Judge postponed the hearing, to hear from the signatory after Petitioner represented that the papers were counter-signed with some misgiving about judicial retribution against the signer. The jurist stated he would order the signatory to appear (95-a). He has not done so to date.

In *Kaimowitz v. The Supreme Court of Florida and The Florida Bar, supra,* the Magistrate's recommendation of dismissal was rejected on Aug. 22, 1997. But Petitioner was ordered to provide a counter-signature of a Northern District attorney on all future filings. That order was entered by the District's new chief judge. It was entered only after the judge assigned to the case originally *sua sponte* recused himself on June 11. No appearance by the parties or counsel ever was allowed in this matter. Preliminary relief requests were ignored, unless they could be dispensed with as being moot when the action was dismissed in 1998 for want of a signature.

REASON FOR GRANTING A WRIT OF CERTIORARI

I. THE ELEVENTH CIRCUIT IS AMONG THOSE CIRCUITS WHICH UNDULY RESTRICT MEANINGFUL ACCESS TO DISTRICT COURTS TO INITIAL FILINGS. OTHERS REQUIRE JUDICIAL SCRUTINY FOR POST-FILING INTERFERENCE WITH THE OPPORTUNITY TO BE HEARD.

Petitioner asserts that he has been denied meaningful access by the Florida AG acting for the State Defendants in the U.S. Court for the Northern District of Florida, in *Kaimowitz v. State of Florida, supra.* Petitioner was the wrong party at the wrong time when he timely filed his claims of state as well as federal ADEA claims in 1994. At the time Petitioner had little reason to know that his pendent state claims would complicate the State's attempts to expand its immunity from private citizen suit in federal court.

From 1994-96, Florida persuaded the Eleventh Circuit and this Court to immunize states from such litigation, unless Congress clearly intended to abrogate such immunity pursuant to Section 5 of the Fourteenth Amendment to the U.S. Constitution. See *Seminole Tribe of Florida v. Florida*, 11 F.3d 1016, 1021 (11th Cir. 1994), *aff'd*, 116 S.Ct. 1114 (1996).

However, before and after that 1996 affirmance by this Court, other circuits, e.g. *Kaimowitz v. Board of Trustees of the University of Illinois*, 951 F.2d 765, *supra, Hurd v. Pittsburg State Univ.*, 109 F.3d 1540, 1544 (10th Cir. 1997), determined that Congress intended to extend the application of the ADEA to the States, *EEOC. v Wyoming*, 460 U.S. 226, 243 n. 18 (1983); *Gregory v. Ashcroft*, 501 U.S. 452, 467 (1991). This Court has not overruled those decisions in *Seminole Tribe.*

In *Kaimowitz v. State of Florida, supra*, the AG twice persuaded a Magistrate entitled to a pension from Florida to bar any discovery or to allow case management scheduling required by Northern District local rule, until the immunity issues were resolved as a matter of law, in 1994, for the State, and in 1995, for specific State agencies named by Petitioner. Neither the Magistrate nor the Chief Judge cited any legal basis for an unprecedented ignoring of case management to advance litigation. Such discovery and scheduling to allow for factual issues to be raised posed a danger of exposing a pattern and practice of ADEA violations susceptible to resolution in favor of Petitioner as pendent state claims in federal court or in state court action, even if Eleventh Amendment immunity applied.

On May 17, 1996, the Chief Judge did resolve the immunity issue against the State--in *Kimel, supra*. The Florida AG, through the same assistant attorney general who participated in *Kimel*, deliberately misled Petitioner a month later by asking the Chief Judge to dismiss a Second Amended Complaint, not because of any alleged violation of orders of April 29-May 2, 1996, but solely on Eleventh Amendment immunity grounds! The AG apparently expected the Chief Judge to look the other way at the omission of his *Kimel* ruling. The Chief Judge did so when he *sua sponte* closed the case and dismissed that pleading, pursuant to his view of a violation of those earlier orders, and on the authority of Local Rule 41.1(B). The jurist did not even wait for the Order to Show Cause proceeding to be resolved as that Local Rule seems to require.

The success of that collaborative effort to keep perhaps meaningful facts out of the Eleventh Circuit consideration of immunity as a matter of law was realized in several consolidated appeals in *Kimel, et al., v. Florida Board of Regents, et al.*, 11 Fla. L. Weekly Fed. C1288 (May 8, 1998). A panel of three judges arrived at three different opinions.

Florida's immunity from the ADEA was granted by two of the three judges. At the same time, by a similar 2-1 vote, panel denied Florida immunity from suit pursuant to the Americans With Disabilities Act, 42 U.S.C. § 12202. Of four cases, two from Florida, and two from Alabama, only one presented the Eleventh Amendment issue arising from the ADA, *Kimel, et al., v. Florida Board of Regents, et al.*, 11 Fla. L. Weekly Fed. *supra*, at 1289, n. 2. All have been resolved as a matter of law without any factual context. The ADEA ruling is clearly in conflict with that in three other circuits, *id.*, at 1290. Thus that matter is ripe for consideration here.

Petitioner meanwhile can only watch from afar with his ADEA federal claims already dismissed without discovery, or consideration of the application of *Kimel, supra*, to his case three months before it was closed without a finding of contempt, thanks to the misleading efforts of the AG for Florida. As a *pro se* litigant, Petitioner was deprived of access to court in the form of that court-imposed restriction when he was denied the opportunity to oppose such order before it was entered, *In re Power*, 851 F.2d 427 (D.C. Cir. 1988).

However, except in cases like *Barfield v. Brierton*, 883 F.2d 923, 937 (11th Cir. 1989), involving prisoners and others contesting conditions of confinement and claiming denial of physical access, the Eleventh Circuit limits a constitutional concept of access, to filing of an action and case by case review to assess whether it is frivolous, *Cofield v. Ala. Public Serv. Com'n*, 936 F.2d 512 (11th Cir. 1991). *Cf. Schwarz v. Kogan*, 132 F.3d 1387, 1394-95, n. 5 (11th Cir. 1997). The Fifth Circuit likewise now limits a "right of judicial access" which it says "could best be described as 'nebulous'" to the filing of suit, in *Foster v. City of Lake Jackson*, 28 F.3d 425, 430 (5th Cir. 1994). The Fifth Circuit thus has denied extension of the concept to include later withholding of data.

The concept of meaningful access to the judicial system for parties entitled to a day in court varies greatly between the clear-cut rights of those being denied physical access in cases involving prisoners and other inmates dependent on intermediaries for the opportunity to be heard, and curtailment of abusive litigants seeking to bombard the courts with their filings. This Court has described the parameters of the former in such cases as *Wolff v. McDonnell*, 418 U.S. 539, 94 S.Ct. 2963, 2986 (1974), relying in part on *Johnson v. Avery*, 393 U.S. 483, 89 S.Ct. 747, 21 L.Ed. 2d 718 (1969), and *Bounds v. Smith*, 430 U.S. 817 (1977). This Court likewise has afforded guidelines to lower courts seeking to curb abuses, *In re McDonald*, 489 U.S. 810, 184, n. 8 (1989).

The circuit conflicts arise within those guideposts. In *Foster v. City of Lake Jackson*, 28 F.3d, *supra*, at 430, n. 7, the Fifth Circuit acknowledged the Seventh Circuit has interpreted its earlier ruling in *Ryland v. Shapiro*, 708 F. 2d 967 (5th Cir. 1983), to include judicial scrutiny of a government cover-up of evidence such as occurred here in the concept of meaningful access. See *Bell v. City of Milwaukee*, 746 F.2d 1205, 1260-61 (7th Cir. 1984), cited favorably in both a majority and dissent in *Vasquez v. Hernandez*, 60 F.3d 325 (7th Cir. 1995).

In *Wilson v. Meeks*, 52 F.3d 1547, 1557 (10th Cir. 1995), the Tenth Circuit cited *Williams v. City of Boston*, 784 F.2d 430, 435 (lst Cir. 1986)(in dicta), as recognizing a "cause of action for cover-up." However, the Tenth Circuit declined to apply the concept in the particular circumstance. Both the Tenth and the First Circuits however generally rely on a broader concept of meaningful access than do the Fifth and Eleventh Circuits. See, e.g., *Smith v. Maschner*, 899 F.2d 940, 947 (10th Cir. 1990), and *Germany v. Vance*, 868 F.2d 9, 15 (lst Cir. 1989). Also accepting the *Bell* standard is *Whalen v. County of Fulton*, 126 F.3d 400, 407 (2d Cir. 1997).

The *Whalen* panel relied on a determination that "(t)he Constitution protects causes of action from arbitrary interference" by government officials, *Barrett v. United States*, 798 F.2d 565, 574 (2d Cir. 1986). But see *Gronne v. Abrams*, 793 F.2d 74, 78 (2d Cir. 1986): "there is no general fundamental right of access to the courts; rather the due process clause merely 'assures that no person will be denied the opportunity to present to the judiciary allegations concerning violations of fundamental rights.' *Wolff v. McDonnell*, 418 U.S. (*supra* at 579). The Third Circuit likewise has resisted a broad reading into the concept, *Ciccarelli v. Carey Canadian Mines, Ltd.*, 757 F.2d 548 (3rd Cir. 1985); *Brown v. Grabowski*, 922 F.2d 1097, (3rd Cir. 1990), *rehearing den., certiorari den. Borough of Roselle v. Brown*, 501 U.S. 1216.

However, the Eighth Circuit has held that harassment of an individual, directly or indirectly, in retaliation for filing law suits impairs the constitutional right of access, *Harrison v. Springdale Water & Sewer Com'n*, 780 F.2d 1422 (8th Cir. 1986). The Ninth and the Sixth Circuits likewise look at claims of a denial of meaningful access through a broader perspective than either the present Fifth or Eleventh Circuits, *Sorrano's Gasco, Inc. v. Morgan*, 874 F.2d 1310 (9th Cir. 1985). *Graham v. National Collegiate Athletic Assn*, 804 F.2d 953, 959 (6th Cir. 1986). With regard to the need for judicial scrutiny of governmental cover-ups, *see also Swekel v. City of River Rouge*, 119 F.3d 1259, 1262 (6th Cir. 1997).

This Court for most of a century has regarded the right to be heard meaningfully in court as fundamental, whether it arises from the First Amendment or Due Process Clauses, see, e.g. *Chambers v. Baltimore & Ohio Railroad*, 207 U.S. 142, 148 (1907); *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 92 S.Ct. 609, 612 (1972); *Richards v. Jefferson County, Ala.*, 116 S.Ct. 1761, 1765, n. 4 (1996).

But as discussed *supra*, the application of those holdings, whether articulated or not, has varied from circuit to circuit, court to court, case to case. Litigants thus remain uncertain whether and to what extent they will be given a meaningful opportunity to be heard, that is, a true day in federal court, if they are neither inmates nor system abusers, but merely citizens seeking to petition the federal judiciary with grievances about government interference with their right to pursue their claims in court.

II. U.S. DISTRICT COURT CHIEF JUDGES HAVE EXCEEDED THEIR AUTHORITY BY REQUIRING A PARTY, OR LAWYER IN GOOD STANDING IN THEIR STATE, TO HAVE A COUNTER-SIGNATURE FROM A COURT BAR MEMBER WITH ANY FILING MADE IN ANY CASE UNTIL THEIR FURTHER ORDER.

This Court also is asked to grant the petition to curtail an unprecedented limitation on the right of party to appear for himself or herself, or as a lawyer for others, to be heard in a United States District Court jurisdiction where, as an attorney, Petitioner continues to be a member in good standing of the State's Bar. The limitation was applied as a sanction after a finding of contempt on Jan. 17, 1997 as a result of Petitioner's actions in one case, the ADEA action he filed for himself against the State.

The Northern District Chief Judge sitting in Gainesville, Fla., apparently relying on his inherent authority, ordered Petitioner to get the counter-signature of a member of his court for every filing in every case brought for himself or others in any of the divisions in his realm until further order. The full dimension of that curtailment was not felt until Petitioner

sought to file another civil action against The Florida Bar as well as the Supreme Court of Florida in another Northern District division, in Tallahassee. The Chief Judge denied a motion on Apr. 24, 1997, to waive the requirement, so that Petitioner would not have to get a counter-signature from another Florida Bar member to sue that association. The Eleventh Circuit received the first petition for writ of mandamus from the Jan. 17 Order shortly thereafter. On Oct. 10, 1997, the Eleventh Circuit dismissed the petition as frivolous, and by Feb. 26, 1998, denied reconsideration.

Meanwhile, Petitioner sought such a signature from a tenured law professor, who was a member in the Northern District, and of necessity a member of the Florida Bar. The potential signatory understandably asked for time to review the papers, including requests for TRO and preliminary relief, and the Order of Jan. 17. Because of the urgency, Petitioner filed the papers which were docketed on May 12 in Tallahassee. The signatory provided a signature by May 27 for filing in that case. In the former ADEA action, the Chief Judge ordered Petitioner to appear on June 19, to show cause why he had proceeded without a signature. The hearing was continued to June 25. That proceeding ended without further sanction but an announcement by the Chief Judge that the signatory would be asked to appear forthwith to verify Petitioner's explanation of the reason for the delay in obtaining the signature. Nearly a year later, no further proceeding has been held in that case.

On Aug. 22, 1997, after a newly-appointed Northern District judge recused himself *sua sponte* from The Florida Bar case, a successor chief judge in Pensacola denied a report and recommendation made four months earlier by a magistrate judge acting on referral from the clerk. The Magistrate had recommended dismissal for want of a counter-signature. The judge, however, found Petitioner in substantial compliance.

But without hearing or notice, Petitioner was instructed to get the counter-signature for every filing in the second case as well. A second petition for writ of mandamus was filed. The Eleventh Circuit notified the Petitioner that it was still pending when the first was denied on Oct. 10. On Feb. 26, 1998, the Eleventh Circuit denied reconsideration of the first, and denied the second as moot, because of subsequent dismissal of the action against the Florida Bar.

Unless the writ is granted by this Court, Petitioner will be doomed to repeat this cycle in each instance whenever the counter-signature requirement results in denial of meaningful access for him or his clients. Before the restriction, in *Sorba v. North Florida Farm Credit Service, Inc.*, 93-10015-CA-MMP (N.D. Fla. 1993), the Chief Judge permitted Petitioner to appear *pro haec vice* for a client based on his Florida Bar admission and standing in the U.S. Court for the Middle District of Florida. Such appearance now would be superfluous for any client who would have to be made aware that his or her attorney is dependent for access to the Northern District on a lawyer already admitted in that forum. Petitioner thus has been deprived of the right to any federal court practice in the area where he has lived since 1992. Further, Petitioner is unable even to file in an emergency to protect himself from abuse in disciplinary proceedings by the Florida Bar, unless he obtains a signature from one of its members who is willing to be asked by the Chief Judge about the signing.

A far less severe but similar sanction on a legal practitioner was summarily struck down by the Supreme Court of Florida, *Gifford v. Payne*, 432 So.2d 38 (Fla. 1983). An attorney found in direct criminal contempt at the trial level was ordered to associate with co-counsel in undertaking representation in criminal cases. In light of the foregoing, it should appear that Petitioner has met the requisites for the writ.

See *Mallard v. United States District Court for the Southern District of Iowa*, 490 U.S. 296 (1989). A writ of mandamus was granted in a 5-4 decision to curtail a district court which imposed a requirement on an unwilling attorney to represent an indigent in a civil case, *id.*, at 298. The trial court refused to release the attorney from the assignment. The Eighth Circuit refused to grant the writ.

This Court's majority found that the attorney met the demanding standard for the writ in light of the fact that federal law did not authorize the judicial coercion. Here nothing in Article III of the United States Constitution, in federal or reported case law would appear to allow a district court judge, even a chief judge, to chill the right of an attorney in good standing by preventing his appearance for others for the foreseeable future unless he has the signature of another lawyer on every paper in every case in the jurist's realm. Further, the Chief Judge made clear on June 25, 1997, that the signatory may be required to explain the circumstances under which the signature was provided. And surely the First and Fourteenth Amendments provide some umbrella for Petitioner, as a citizen, to come into court *pro se*, without an attorney, i.e. without the signature of an lawyer regarded as an officer of the court deemed acceptable to the Chief Judge to monitor the litigant's paperwork.

Petitioner concedes that on the second of three attempts in 1996-97 for him to show cause why he should not be held in contempt for persisting in assertions of judicial bias, he did violate a court order prohibiting such comments outside the framework of recusal papers. Petitioner further concedes he may be sanctioned for that inadvertent inclusion made because first the Magistrate in 1995 and then the Chief Judge in 1996 ignored such recusal papers and recommended and effected dismissal respectively of the underlying ADEA action.

But surely the described sanction extends judicial reach beyond constitutional authority to muzzle attorneys and litigants with whom a judge disagrees. As in *Mallard*, *supra*, at 309, Petitioner thus meets the requisites for a writ. Petitioner has no alternative remedy; he has not made either judge a party to any case; piece-meal litigation will result only if the writ of certiorari not issued. The *Mallard* dissent also is worth noting here, insofar as a primary concern seemed to be about rewarding an attorney refusing *pro bono* assignment "simply because he would rather do something else with his time," *id.*, at 311. Similar scrutiny of the conduct of a lawyer who incurred punishment by bar and bench arose in *Gentile v. State Bar of Nevada*, 501 U.S. 1030 (1991). A lawyer was reprimanded in the state system for violating a Bar rule limiting publicity. The lawyer had called a press conference contrary to Bar rule intended to preserve a the right to fair trial in a courtroom. The attorney contended he did so primarily to counter adverse publicity already released about his client. Plurality opinions balanced his right of free speech to protect his client, and the Bar's understandable interest in having issues tried in court rather than in media.

Here the punishment goes far beyond a reprimand, to deny both procedural and substantive due process to a lawyer who continues to be in good standing in Florida as a member of its bar. This lawyer no longer can appear for himself even *pro se*, i.e. without the signature of a member of the Bar who meets the criteria of Northern District membership fashioned by the judges themselves in establishing local rules. And Petitioner certainly no longer would be allowed to appear *pro haec vice*, if any client would be foolhardy enough to seek his representation under the circumstances. The doors to the courts of the Northern District effectively are closed to Petitioner to appear as of right. The signature requirement is unconstitutional on its face and as applied.

Further the record for the petition for certiorari reveals that the Northern District jurists chose to apply even local and federal rules of civil procedure, only if and when they saw fit, in particular circumstances. The record reveals disregard of provisions for scheduling orders, for discovery, for hearings. for judicial dismissal, and for adherence to judicial disqualification matters, *cf. K. M. Fall, Liljeberg v. Health Services Acquisition Corp.; The Supreme Court Encourages Disqualification of Federal Judges under Section 455(a)*, 1989 Wisc. L. Rev. 1033, 1058-59 (The Eleventh Circuit was criticized for adding a "harmless error" test for litigants to overcome in applications for recusal in addition to requisites fashioned in that case by this Court to assure the appearance of justice.) The only certain consideration below was compliance with one order by one of the judges. By fashioning and enforcing that order demand for a counter-signature, the judges moved the United States one significant step away from being a nation of laws, at least in the Northern District. A petition for writ of certiorari should be issued.

CONCLUSION

For the foregoing reasons, certiorari should be granted to review the affirmance by the Eleventh Circuit of a dismissal and closing of an ADEA case based on erroneous application of a local rule. Certiorari also should be granted to review the attempt to end Petitioner's right to meaningful appearance for himself and others in courts there.

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IN RE GABE KAIMOWITZ, #97-2211 and #97-3110
Notice of status of mandamus petitions, Oct. 10, 1997.....99-a
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IN THE UNITED STATES COURT OF APPEALS
FOR THE 11TH CIRCUIT

NO. 97-3110

FILED
U.S. COURT OF
APPEALS
FEB 26 1998
THOMAS K. KAHN
CLERK

IN RE:

GABE KAIMOWITZ,

Petitioner

On Petition for Writ of Mandamus to the
United States District Court for the
Northern District of Florida

Dist. Ct. Dkt. No. 4:97-CV-185

BEFORE: ANDERSON and DUBINA, Circuit Judges.

BY THE COURT:

Petitioner asks this Court to compel the district court to allow him to proceed on dispositive motions without the counter-signature of a bar member, as currently required by the district court. Petitioner has requested en banc consideration, asserting that the issues presented relating to his right to meaningful access to the federal courts are issues of first impression.

Mandamus is a drastic remedy that is available only to correct a clear abuse of discretion or usurpation of judicial power. The petitioner has the burden of showing that the claimed right to issuance of the writ is clear and indisputable.

In re Lopez-Lukis, 113 F.3d 1187 (11th Cir. 1997). In light of the district court's dismissal of the underlying action, this petition for writ of mandamus is moot.

En banc consideration is appropriate when "consideration by the full court is necessary to secure or maintain uniformity of its decisions, or when the proceeding involves a question of exceptional importance." Fed.R.App.P. 35. Under the circumstances, en banc consideration is not appropriate. The petition for writ of mandamus is DISMISSED as moot. Petitioner's motion for en banc consideration is DENIED.

IN THE UNITED STATES COURT OF APPEALS
FOR THE 11TH CIRCUIT

NO. 97-2211

Dist C. Dkt. No. 4:94-cv-10061

FILED
U.S. COURT OF
APPEALS
FEB 2 6 1998
THOMAS K. KAHN
CLERK

IN RE:

GABE KAIMOWITZ,

Petitioner

On Petition for Writ of Mandamus to the
United States District Court for the
Northern District of Florida

BEFORE: ANDERSON and CARNES, Circuit Judges.

BY THE COURT:

Petitioner requests reconsideration of this Court's denial of his petition for writ of mandamus. He contends the denial was "premature" because we denied the petition before ruling on two other motions filed in this Court. Petitioner also filed a motion to stay proceedings in the district while we consider this motion for reconsideration.

A party seeking rehearing or reconsideration must specifically allege any point of law or fact that this Court overlooked or misapprehended. See Fed.R.App.P. 40. Because Petitioner has failed to meet this burden, the motion for reconsideration is DENIED. The motion to stay proceedings in the district court is DENIED as moot.

IN THE UNITED STATES COURT OF APPEALS
FOR THE 11TH CIRCUIT

Nos. 96-2478; 96-3116

FILED
U.S. COURT OF
APPEALS
APR 8 1998
THOMAS K. KAHN
CLERK

GABE KAIMOWITZ,

Plaintiff-Appellant,

versus

STATE OF FLORIDA, by and through Governor Lawton Chiles and Attorney General Robert A. Butterworth and their successors, employees, agents and assignees; STATE OF FLORIDA BOARD OF REGENTS; DEPARTMENT OF JUVENILE JUSTICE; FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS; FLORIDA DEPARTMENT OF CORRECTIONS, et al.,

Defendants-Appellees.

Petitioner

On Appeal from the United States District Court for the Northern District of Florida

ON PETITION(S) FOR REHEARING AND SUGGESTION(S) OF REHEARING EN BANC (Opinion_____, 11th Cir., 19__, ____ F.2d_____).

BEFORE: COX, DUBINA and CARNES, Circuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35), Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Suggestion(s) of Rehearing En Banc are DENIED.

ENTERED FOR THE COURT.
Joel F. Dubina
UNITED STATES CIRCUIT JUDGE

ORD-42
(6/95)

[DO NOT PUBLISH]
IN THE UNITED STATES COURT OF APPEALS
FOR THE 11TH CIRCUIT

Nos. 96-2478; 96-3116

FILED
U.S. COURT OF APPEALS
ELEVENTH
CIRCUIT
FEB 11 1998
THOMAS K. KAHN
CLERK

District Court Docket No. 94-10061-MMP

GABE KAIMOWITZ,

Plaintiff-Appellant,

versus

STATE OF FLORIDA, by and through Governor Lawton Chiles and Attorney General Robert A. Butterworth and their successors, employees, agents and assignees; STATE OF FLORIDA BOARD OF REGENTS; DEPARTMENT OF JUVENILE JUSTICE; FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS; FLORIDA DEPARTMENT OF CORRECTIONS, et al.,

Defendants-Appellees.

Petitioner

Appeals from the United States District Court for the
Northern District of Florida
(February 11, 1998)

Before COX, DUBINA, and CARNES, Circuit Judges.

PER CURIAM:

AFFIRMED. See 11th Cir. R. 36-1.[1]

Enter: February 11, 1998
For the Court:
By Matt Davidson
Deputy Clerk

ISSUED AS MANDATE: *4/17/98*

1--11th Cir. R. 36-1 provides:
When the court determines that any of the following circumstances exist:
(a) judgment of the district court is based on findings of fact that are not clearly erroneous;
(b) the evidence in support of a jury verdict is sufficient;
(c) the order of an administrative agency is supported by substantial evidence on the record as a whole;
(d) summary judgment, directed verdict, or judgment on the pleadings is supported by the record;
(e) judgment has been entered without a reversible error of law; and an opinion would have no precedential value, the judgment or order may be affirmed or enforced without opinion.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

KAMIOWITZ (sic)

vs CASE NO. 94-10061 MMP

STATE OF FLORIDA, et al.

REFERRAL AND ORDER

Referred to Judge Maurice Paul on February 23, 1996
Motion/Pleadings: Motion for preliminary injunction
Filed by pla on 2/12/96 Doc. #93
RESPONSES:
deft. on 2/22/96 Doc. #99
on Doc. #

ROBERT A. MOSSING, CLERK
1 BY
LC (1 or 2) Deputy Clerk: Kathryn Revell

ORDER OF COURT

It is ORDERED this ***1st*** day of ***March***, 1996,
the requested relief is **DENIED --**

Maurice M. Paul,
MAURICE M. PAUL
CHIEF UNITED STATES DISTRICT JUDGE

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Copies mailed to: *Quillen, Jennings, Kaimowitz, Oxman*
102

OFFICE OF CLERK
U.S. DISTRICT COURT
GAINESVILLE, FL
1996 MAR-1 PM 12:07 N

THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

GABE KAIMOWITZ,

Plaintiff,

v. CASE NO. GCA 94-10061-MMP

STATE OF FLORIDA, et al.,

Defendants

ORDER OF DISMISSAL AND TO SHOW CAUSE

This cause comes before the Court sua sponte upon certain filings made by Plaintiff. In an order dated May 2, 1996, the Court struck all of Plaintiff's pleadings in this cause, noting the following:

> A status conference was held on Monday, April 29, 1996. At the conference, the Court admonished Plaintiff to refrain--in all respects--from submitting pleadings to the Court which include scurrilous remarks intended to abuse various individuals and court officers. Plaintiff was further informed that while he is certainly entitled to file pleadings which contain those factual allegations which he deems relevant to his complaint, ***he is not entitled to insert, superfluous, abusive language therein***.

Doc. 120 (emphasis added). See also Doc. 122 (transcript of status conference).

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145

On May 20, 1996, Plaintiff filed his second amended complaint, which contained a "preliminary statement" describing the procedural history of this and other cases [see 2d A. Compl., Doc. 125 (hereinafter "Compl.") at 1-2], and other matters in the text of the complaint that are not germane to the case at bar.[1] On June 25, 1996, Plaintiff filed a response (Doc. 139) to Defendants' motion to dismiss (Doc. 136), containing inferences that Defendants' counsel have obstructed the progress of this cause, references to needing adjudication before "an unbiased judge," and repeated demands for recusal.[2] Again, notwithstanding the foregoing admonition to Plaintiff, Plaintiff's second amended complaint and response are replete with immaterial and scandalous matters that have no bearing on this action.

The Federal Rules of Civil Procedure provide that "pleadings" containing "any redundant, immaterial, impertinent, or scandalous matter" may be stricken by a court upon its own motion. Fed. R. Civ. P. 12(f). A pleading generally should not be stricken, unless it contains matters that

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1--Among other things, Plaintiff references: another case over which the Court has presided, Sorba v. North Florida Farm Credit Services, Inc., No. 93-10015 (N.D. Fla. 1994), which is completely unrelated to Plaintiff's present ADEA claim [Compl. at 2]; Plaintiff's pending motion to recuse the Court [see id. at 1-2]; dismissal of the University of Florida as a defendant in this cause "in part because Chief Judge Maurice Paul received undergraduate and law degrees there" [id. at 4]; argument that Plaintiff does not have to be a member of The Florida Bar, as required by the Court for Plaintiff to appear in this cause, "since Plaintiff appears here as a party pro se" [id. at 7]; and statements that this Court has denied Plaintiff preliminary injunctive relief "without opinion," and that Plaintiff has appealed that ruling to the Eleventh Circuit [id. at 11].

2--These statements are properly the subject of a motion for recusal or memorandum accompanying such motion, not in documents unrelated to the recusal motion. At the present time, Plaintiff's motion for recusal is pending. See Doc. 131.

could have no bearing on the subject matter of the litigation. E. g., LeDuc v. Kentucky Cent. Life Ins. Co., 814 F. Supp. 820, 830 (N.D. Cal. 1992).

As evidenced by Plaintiff's second amended complaint and response to Defendants' motion to dismiss, Plaintiff has attempted throughout the course of these proceedings to interject matters that have no bearing on the sole subject of the present litigation: alleged age discrimination, in violation of the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. § 621, In sum, Plaintiff has repeatedly tried to change this case into something it is not--and, in so doing, he has significantly protracted the pendency of his own cause. Cf. Federal Nat's Mortgage Ass'n v. Cobb, 738 F. Supp. 1220, 1224 (N.D. Ind. 1990)("Given the purpose of this rule, the court may strike a matter from a pleading on its own initiative where doing so advances the progress of litigation.")(citations omitted.)

In light of the Court's clear warnings to Plaintiff to no longer engage in such conduct [see Docs. 120 & 122], and Plaintiff's deliberate and willful failure to abide by these warnings, the Court finds it appropriate to strike Plaintiff's second amended complaint pursuant to Rule 12.[3] Moreover, for the same reasons, it is appropriate to dismiss this cause without prejudice. See generally N. D. Fla. Loc. R. 41.1(B)(providing for dismissal for failure to comply with a court order). If Plaintiff chooses to refile another suit based upon the same factual conduct at issue in this cause, he shall avoid including ***any matters unrelated to his alleged age***

3--Plaintiff's response cannot be stricken from the record--even though it contains immaterial, impertinent, and scandalous matter--because it is not a "pleading" within the scope of the Federal Rules. See Fed. R. Civ. P. 12(f). See also Resolution Trust Corp. v. Blasdell, 154 F.R.D. 675, 683 (D. Ariz. 1993) (rule governing motion to strike does not authorize a court to strike documents other than pleadings).

discrimination by DEFENDANTS.

Finally, the Court warned Plaintiff at the April status conference that he would be cited for contempt if he included in his filings anything other than legal and factual matters pertaining to his age discrimination claim. See Doc. 122. Plaintiff failed to comply with this directive. Consequently, the Plaintiff shall show cause to the Court within twenty (20) days of this order why he should not be held in contempt.

It is therefore

ORDERED AND ADJUDGED:

1. Plaintiff's second amended complaint (Doc. 125) is STRICKEN. See Fed. R. Civ. P. 12(f).

2. Plaintiff's cause is dismissed, without prejudice.

3. The clerk is directed to close this case. The court specifically retains jurisdiction to determine whether Plaintiff should be cited for contempt.

4. Plaintiff should SHOW CAUSE to the Court within twenty (20) days of this order why he should not be cited for contempt.

DONE AND ORDERED this *29th* day of *July*, 1996.

Maurice M. Paul

MAURICE M. PAUL, CHIEF JUDGE

PETITIONER'S NOTE: This Order closing the case gave rise to the appeal in Kaimowitz v. State of Florida, et al., #96-3116 (11th Cir. 1996). Briefing on the merits was started and completed in 1997. The Eleventh Circuit *sua sponte* consolidated that action in 1996 with an earlier appeal from denial of preliminary injunction without hearing or explanation on March 1, 1996. That appeal was #96-2478 (11th Cir. 1996). Briefing from that earlier appeal was started and completed in 1996. Injunctive relief was sought to maintain the status quo in hiring of attorneys by one defendant agency until this action was resolved. Both appeals were resolved together on Feb. 11, 1998.

NO PAGE 13-a

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

GABE KAIMOWITZ,

Plaintiff,

v. CASE NO. GCA 94-10061-MMP

STATE OF FLORIDA, et al.,

Defendants.

ORDER OF DISCHARGING ORDER TO SHOW CAUSE

This cause comes before the Court upon Plaintiff's response (Doc. 148) to the Court's order to show cause why Plaintiff should not be cited for contempt [Doc. 145]. The Court finds that the dismissal of Plaintiff's cause, without prejudice to Plaintiff to refile, is sufficient punishment for any intentional or unintentional violation of the Court's May 2, 1996 Order (Doc. 120).

However, in so holding, the Court has several caveats to which Plaintiff must abide.

First, since this case has been closed, if Plaintiff chooses to refile his complaint, he will have to do so in a separate action.

Second, the Court expects Plaintiff to fully comply with the Federal Rules of Civil Procedure and in all pleadings and other materials he may file. In other words, any future complaint

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filed by Plaintiff shall include facts comprising "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a). Allegations detailing the procedural history of this or any other case, supposed bias by this or any other Court or judicial officer, and any other irrelevant or scandalous information shall be excluded from the complaint. Plaintiff shall keep his averments limited solely to factual matters needed to prove the essential elements of his legal claims.[1] Any extraneous matters shall be subject to a motion to strike, or other appropriate action by the Court.

Third, the Court fully expects that Plaintiff, who is a member of the Florida Bar, to "make reasonable efforts to expedite litigation" in all claims he files in this Court on his own behalf, or as counsel for others. RULES REGULATING THE FLORIDA BAR R. 4-3.2. See also Rule 4-1.3 ("A lawyer shall act with reasonable diligence and promptness in representing a client."). Plaintiff shall not protract the proceedings by interjecting matters which are wholly unrelated to the factual basis of his action.

Fourth, the Plaintiff shall refrain from impugning the character of this and other Courts, other judicial officers, and other members of the Bar. See generally RULES REGULATING THE FLORIDA BAR, preamble (. . . . "A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers, and public officials."); Rule 4-8.2(a) ("A lawyer shall not make a statement that the lawyer knows to be false or with reckless

---

1--If Plaintiff believes he has grounds for recusal of the Court, then he shall include such grounds in a separate motion for recusal--and not in other unrelated pleadings, motions, or other filings. Similarly, if Plaintiff believes that opposing counsel has engaged in misconduct, he shall include those allegations in an appropriate motion--and not in other unrelated pleadings, or other filings. The Court simply cannot permit Plaintiff to continue to reassert arguments in unrelated filings, or to otherwise continue to file motions concerning matters that have already been resolved.

disregard as to its truth or falsity concerning the qualifications or integrity of a judge. . ."). Again, to the extent that Plaintiff believes he has grounds for recusal of the Court, he shall only assert those grounds in a properly filed motion for recusal.

The foregoing limitations on the conduct of the Plaintiff are expected of all parties and counsel who appear before the Court. These limitations are designed to further the just and speedy disposition of all matters before the Court. Moreover, they maintain the integrity of the judicial system and preserve the proper decorum necessary for carrying on court business. Plaintiff, as an officer of the court, has a continuing duty to abide by these standards of conduct when he appears before this and other tribunals.

Accordingly, it is hereby

ORDERED AND ADJUDGED:

1. The Court's order to show cause (Doc. 145) is DISCHARGED.

2. Plaintiff shall conduct himself in accordance with this order if he chooses to refile his ADEA claims in a separate action.

DONE AND ORDERED this 11th day of September, 1996.

Maurice M. Paul

MAURICE M. PAUL, CHIEF JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

GABE KAIMOWITZ,

Plaintiff,

v. CASE NO. GCA 94-10061-MMP

STATE OF FLORIDA, et al.,

Defendants.

ORDER

A hearing for Plaintiff to show cause why he should not be sanctioned or otherwise held in contempt of court was held in this matter on December 17, 1996. At the hearing, Plaintiff conceded that he had violated the Court's numerous admonitions to : (1) refrain from including in his filings language that the Court had a conflict of interest or bias; and (2) only include such allegations in a properly filed motion for recusal. See, e.g., Doc. 153, at 3. On the basis of Plaintiff's concession, the Court finds Plaintiff in violation of the Court's previous orders. Although a monetary sanction is clearly warranted under the circumstances,* the Court declines to

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* Ms. Janice Jennings, Esq., representing the State of Florida, asked that the Court award the State a monetary sanction against Plaintiff of $15,000.00. There is no basis for such an award to the State. The show cause hearing was limited solely to a determination of whether Plaintiff had violated the impose such a sanction in this instance. Consequently, any sanctions paid would necessarily have to be into the registry of the Court.

impose such a sanction in this instance. Nevertheless, the Court specifically directs Plaintiff that in any future filings he makes in the United States District Court for the Northern District of Florida (whether on his own behalf or on behalf of others), he shall first obtain the counter-signature of any attorney who is a member of the bar of this Court. The attorney counter-signing such filings need not be counsel of record in the case.

The Court is keenly aware that the pendency of Plaintiff's cause has been greatly delayed by Plaintiff's own actions and misconduct. This is a 1994 case which never proceeded to discovery, prior to the time the Court dismissed it without prejudice. The Court is not saying that Plaintiff cannot, under any set of factual circumstances, state a claim on which relief can be granted. Rather the Court simply wishes to convey the point it has made on numerous occasions to Plaintiff. If Plaintiff intends to pursue a legal remedy in this or any other division of the Northern District of Florida, he will have to abide by the rules of conduct and procedure which govern all parties and their attorneys appeared before a federal court.

Accordingly, based upon the foregoing, it is hereby

ORDERED AND ADJUDGED:

1. The Court's December 3, 1996, order to show cause why he should not be sanctioned or held in contempt of court [Doc. 165] is DISCHARGED.

2. The Court specifically finds that Plaintiff violated the Court's numerous admonitions to refrain from including language of conflict and/or bias in anything other than a separately filed motion for recusal.

3. The Court imposes the following sanction upon Plaintiff: In any future filings Plaintiff makes in the United States Court District Court for the Northern District of Florida (on behalf of himself or others), he shall first obtain the counter-signature of an attorney who is a member of the bar of this Court. The attorney counter-signing such filings need not be

counsel of record in the case. This sanction shall remain in full force and effect until further order of this Court.

4. This case having previously been closed, any other pending motions are MOOT. The Court only retains jurisdiction over this cause to the extent necessary to enforce or otherwise modify the sanction imposed upon Plaintiff in paragraph 3.

DONE AND ORDERED this *17th* day of *January*, 1997.

Maurice M. Paul

MAURICE M. PAUL, CHIEF JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

GABE KAIMOWITZ,
Plaintiff,

Case No. 4:97cv185/RV

SUPREME COURT OF FLORIDA,
et al.,
Defendants.

ORDER

I have considered the Magistrate Judge's Report and Recommendation dated May 22, 1997 (doc. 10), as well as the plaintiff's filing of the countersigned documents by an attorney who is a member of the bar of this Court, Joseph Little (doc. 15). It appears that the plaintiff has substantially complied with the previous orders of this Court.

Therefore, the Report and Recommendation will not be adopted because the conduct for which the sanction was recommended has been promptly corrected.

This matter is referred back to Magistrate Judge Sherrill for further handling. The plaintiff is cautioned that all future filings must be countersigned by an attorney who is a member of the bar of this Court.

DONE AND ORDERED this 22 day of August, 1997.

Roger Vinson
ROGER VINSON
Chief United States District Judge

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PENSACOLA, FLA.
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IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

KAIMOWITZ

vs CASE NO. 94-10061 MMP

STATE OF FLORIDA, et al.

Referred to Magistrate Judge Sherrill on October 6, 1994
Type of Motion/Pleadings: Motion to Stay

Filed by dft on 10/3/94 Doc. No. 19
RESPONSE:
Filed by pla. on 10/5/94 Doc. No. 21

ROBERT A. MOSSING, CLERK
By Kathy Revell
Deputy Clerk

ORDER OF COURT

It is ORDERED this ***8th*** day of November, 1994:
The requested relief is GRANTED. Defendant should not be required to submit to discovery if it is not the proper party to this suit

William C. Sherrill
WILLIAM C. SHERRILL JR.
UNITED STATES MAGISTRATE JUDGE

ENTERED ON DOCKET *11/10/94* By *BP*

Rules 58 & 79(a) FRCP or 32(b)(1) & 55 FRCP
Copies mailed to: *Quillen, Kaimowitz,*

OFFICE OF
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U.S. DISTRICT
COURT
NORTH DIST.FLA.
1994 NOV-8 PM 2:49

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

GABE KAIMOWITZ
Plaintiff,

vs GCA 94-10061 MMP

STATE OF FLORIDA
Defendant.

ORDER

This cause is before the court on Plaintiff's motion pursuant to Fed.R.Civ.P. 56(f), seeking to conduct discovery before the court rules on the motion to dismiss or for summary judgment. Doc. 33. The court previously granted Defendant's motion to stay discovery, finding it should not be required to submit to discovery if it is not a proper party to this suit. Doc. 27.

Plaintiff's motion for discovery will be denied. The court advised the parties that the issues to be addressed were whether Defendant has Eleventh Amendment immunity and who is the proper Defendant to this suit. Doc. 29, pp. 4-9. As relevant to the proper party inquiry, the parties were also directed to address whether the scope of the EEOC investigator included Defendant.

Plaintiff has not demonstrated that the Eleventh Amendment and proper party inquiries can be addressed only after discovery. Further, his request is not in compliance with Fed.R.Civ.P. 56(f) because he has not shown, by affidavit, that he cannot for reasons stated present facts by affidavit which are essential to his opposition. While Defendant has submitted

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Kaimowitz, Quillen 1995 JAN-4 PM 4:06 FILED

affidavits, doc. 30, exs. C and D, they cite to legal authority. These are not factual issues.

Accordingly, it is ORDERED:

1. Plaintiff's motion for discovery, doc. 33, is DENIED. The clerk shall return this file after docketing this order.

2. On or after return of the file by the clerk, the court will take the motion for summary judgment under advisement.

DONE AND ORDERED this *4th* day of January, 1995.

William C. Sherrill, Jr.

WILLIAM C. SHERRILL, JR.
UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

Kaimowitz

vs CASE NO. 94-10061 MMP

State of Florida

REFERRAL AND ORDER

Referred to Judge Maurice Paul on January 11, 1995
Motion/Pleadings: Objection (motion) to Magistrate Judge's order of 1/5/95.
Filed by pla on 1/10/95 Doc. #38
RESPONSES:
Doc. #
on Doc. #

ROBERT A. MOSSING, CLERK
1 BY Blair K. Patton
LC (1 OR 2) Deputy Clerk

ORDER OF COURT

It is ORDERED this ***19th*** day of January, 1996,
the requested relief is *denied. The court has reviewed the order and all timely objection is thereto and affirms the decision of the Magistrate Judge.*

Maurice M. Paul,
MAURICE M. PAUL
CHIEF UNITED STATES DISTRICT JUDGE

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NORTH. DIST.FLA
TALLAHASSEE, FL

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IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

GABE KAIMOWITZ,

Plaintiff,

v. CASE NO. GCA 94-10061-MMP

STATE OF FLORIDA,

Defendant.

ORDER

This file has been presented to the undersigned for ruling on the plaintiff's "Motion for Disqualification of Magistrate" (doc. 44). However, this is the type of motion that should first be presented to the judicial officer whose removal is being sought.

The clerk is directed to refer this file to Magistrate Judge Sherrill for ruling on plaintiff's motion for disqualification.

DONE AND ORDERED this *13th* day of April, 1995.

Maurice M. Paul

MAURICE M. PAUL, CHIEF JUDGE

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TALLAHASSEE, FL

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IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

GABE KAIMOWITZ
Plaintiff,

vs GCA 94-10061 MMP

STATE OF FLORIDA
Defendant.

ORDER

Chief Judge Paul has remanded Plaintiff's motion for disqualification for consideration by the undersigned as a motion for recusal. Doc. 44. The motion was read previously by the undersigned and deemed to give rise to no basis for recusal prior to entry of the report and recommendation, doc. 50. If it had been meritorious, recusal would have been ordered and that report and recommendation would not have been entered.

Plaintiff contends that recusal is required because the undersigned is eligible to receive retirement benefits from the State of Florida due to former employment with several State agencies. Plaintiff's contention is factually correct. The undersigned was employed as counsel to the Speaker of the House of Representatives in 1973-1974, in various capacities with the Department of Legal Affairs in 1974-1979, and as an administrative hearing officer for the Division of

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TALLAHASSEE, FL

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Administrative Hearings in 1984-1988. Since the employment was just over 10 years, the undersigned has a vested interest in State retirement benefits.

Plaintiff seeks recusal of the undersigned pursuant to 42 [should be 28] U.S.C. § 455(b)(4) and (d)(5). Subsection (b)(4) provides that a magistrate shall disqualify himself if:

> He knows that he, individually, or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding.

Subsection (d)(5) defines "financial interest" as "ownership of a legal or equitable interest, however small, as a director, adviser, or other active participant in the affairs of a party [with exceptions]."

Subsection 455(b)(4) thus has two parts, and in both cases recusal is mandatory. Recusal is required where a judge has a financial interest "in the subject matter in controversy," regardless of the amount of the interest. 28 U.S.C. § 455(d)(4) and In re Cement Antitrust Litigation (MDL No. 296), 688 F.2d 1297, 1308 (9th Cir. 1982), judgment aff'd sub nom., Arizona v. U.S. District Court for District of Arizona, 459 U.S. 1191 (1983). Recusal is also required if the judge has any other financial interest which "could be substantially affected by the outcome of the proceeding." § 455(b)(4); Id..

The undersigned financial interest in the State of Florida retirement fund is not an interest in the subject matter in controversy in this case, however. The subject matter in controversy is Plaintiff's claim that he was unlawfully denied employment with the State of Florida. The claim would determine Plaintiff's employment relationship with Defendant. Participation in the Florida retirement system is a benefit of such employment. But that it is a tangential benefit does not make it the subject matter of the controversy of this case.

Plaintiff has raised no claim concerning the State of Florida retirement fund except as a consequence of employment. Thus, the first part of subsection (b)(4) does not apply. See Christiansen v. National Savings and Trust Co., 683 F.2d 520, 524-526 (D.C. Cir. 1982)(district judge's participation in Blue Cross-Blue Shield (BC-BS) plan was not a financial interest in the subject matter in controversy of suit by other BC-BS participants against BC-BS to require an accounting of interest earned upon funds retained); In re Perkins, 1988 WL 120651 (N.D. Ill. 1988)(interest of spouse of bankruptcy judge in a teacher's retirement system was not a financial interest in the subject matter in controversy where creditors sought turnover of the debtor's interest in the same retirement fund).

Secondly, the undersigned's financial interest in state retirement would not be "substantially" affected by the court's decision in this case. Were Plaintiff to succeed, he conceivably would become a state employee and, on a monthly basis, would contribute his share (along with the state's share) toward a retirement benefit that, after ten years of employment, would vest entitlement to retirement benefits upon reaching retirement age.[1] This presumably would not adversely impact the fund at all, and thus have no affect upon the undersigned's interest. Were he to be awarded damages, it is highly unlikely that such an award would be paid from the retirement fund. It is much more likely that such an award with (sic) come from appropriated funds. But even if it were, the undersigned's interest could not be substantially affected given the size of the state retirement system.

The undersigned has also considered the motion as potentially arising under 28 U.S.C. § 455(a), which provides:

1—If it did not vest, he would be refunded only his own contributions.

> Any justice, judge or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

The standard for recusal pursuant to 28 U.S.C. §455 (a) is an objective one:

> "The test is whether an objective, disinterested, lay observer fully informed of the facts underlying the grounds on which recusal was sought would entertain a significant doubt about the judge's impartiality." Parker v. Conners Steel Co., 855 F.2d 1510, 1524 (11th Cir. 1988), cert. denied, -- U.S. --, 109 S.Ct. 2066, 104 L.Ed.2d 631 (1989).

McWhorter v. City of Birmingham, 906 F.2d 674, 678 (11th Cir. 1990), reh. denied 917 F.2d 570 (1990).

An objective, disinterested observer would not entertain a significant doubt as to the undersigned's impartiality based upon the facts set forth in this motion, or in previous ones. An expectation of a retirement pension at age 65, to be paid from a separately operated retirement system, has little to do with Plaintiff's claims in this case.

With regard to previous motions, the undersigned last was an employee of the Department of Legal Affairs in April 1979. The undersigned was not an employee of any other department or agency involved in this suit. From April 1979 through January 1987, the undersigned continued to represent the Secretary of the Department of Corrections in Costello v. Wainwright, but on contract paid by the Department of Corrections. (Payment during the hearing officer years was only to the extent of overtime work, and the time needed was diminished by then.) The Costello suit involved claims of overcrowding and the systemic delivery of health care within the Florida prison system, and had nothing to do with the manner in which agencies of the State of Florida employ attorneys. From 1979 through 1984, the undersigned was in private practice primarily representing plaintiffs in Title VII cases.

The passage of 15 years is enough to dispel any doubt of impartiality toward the Department of Legal Affairs, if any ever existed. Further, an objective, disinterested observer would not entertain a significant doubt as to the undersigned's impartiality toward Plaintiff based upon the facts concerning the other work.

Accordingly it is ORDERED that Plaintiff's motion, doc. 44, as a motion for recusal is DENIED.

DONE AND ORDERED this 18th day of April, 1995.

William C. Sherrill Jr.

WILLIAM C. SHERRILL, JR.
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

GABE KAIMOWITZ
Plaintiff,

vs GCA 94-10061 MMP

STATE OF FLORIDA
Defendant.

ORDER AND FINAL JUDGMENT

This cause is before the Court upon the magistrate judge's report and recommendation dated April 11, 1995. All parties have been furnished copies of the report and recommendation and have been afforded an opportunity to file objections pursuant to 28 U.S.C. §636(B)(1). Having considered the report and recommendation and all objections thereto timely filed by the parties, the Court has determined that the recommendation should be adopted.

ENTERED ON DOCKET *5/22/95* By *KR* OFFICE OF CLERK
Rules 58 & 79(a) FRCP or 32(b)(1) & 55 FRCP U.S. DISTRICT
Copies mailed to: *WSC, Quillen, Kaimowitz* COURT
NORTH. DIST.FLA
TALLAHASSEE, FL

FILED *61* 1995 MAY 19 PM 4:42

Accordingly, it is

ORDERED:

1. The magistrate judge's report and recommendation is adopted and incorporated by reference in this order of the Court.

2. Defendant's motion to dismiss, doc. 5, is GRANTED and the complaint DISMISSED with prejudice as to the State of Florida as a defendant.

DONE AND ORDERED this *19th* day of *May*, 1995.

Maurice M. Paul

MAURICE M. PAUL, CHIEF JUDGE

CIV 31
(Rev 5/83)

JUDGMENT IN A CIVIL CASE

United States District Court	] Northern District of Florida
Case Title	] Docket Number
KAIMOWITZ	] 94-10061 MMP
v.	] Name of Judge or Magistrate Judge
STATE OF FLORIDA, et al.	] MAURICE M. PAUL

☐ **Jury Verdict**. This action came before the Court and a jury with the judicial officer named above presiding. The issues have been tried and the jury has rendered its verdict.

X Decision by Court. This action came to trial or hearing before the Court with the judge (magistrate judge) named above presiding. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

DEFENDANT'S MOTION TO DISMISS IS GRANTED AND THE COMPLAINT DISMISSED WITH PREJUDICE AS TO THE STATE OF FLORIDA AS A DEFENDANT.

ROBERT A. MOSSING, CLERK] May 22, 1995
By Deputy Clerk
Kathryn N. Revell

ENTERED ON DOCKET May 22, 1995 by *KNR*
(Rules 58 and 79(a) or 32(b)(1) & 55 FRCP)
Copies mailed to; QUILLEN, KAIMOWITZ

62

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

GABE KAIMOWITZ
Plaintiff,

vs GCA 94-10061 MMP

STATE OF FLORIDA
Defendant.

REPORT AND RECOMMENDATION

Pending are Plaintiff's motions for a ruling that the judgment entered, doc. 62, is final and appealable, and for default judgment against the Florida Board of Regents and ten Departments of the State of Florida executive branch of government. Docs. 63 and 68.

The complaint was dismissed with prejudice as to the State of Florida. Doc. 61. While the report and recommendation for dismissal was pending, but prior to the order adopting the report and recommendation and dismissing with prejudice the complaint (which named only the State of Florida as a defendant), Plaintiff filed a "Notice of filing First Amended Complaint." Plaintiff contends in the "Notice" that the State of Florida had not filed a responsive pleading (having filed only a motion to dismiss or for summary judgment, doc. 50), and that amendment of the complaint was possible without leave of court under Fed.R.Civ.P. 15(a). Doc. 59. This document

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NORTH. DIST.FLA
TALLAHASSEE, FL

FILED *69* 1995 JULY 6 AM 8:44

was filed on May 17, 1995, just two days before the order adopting the report and recommendation was entered. The amended complaint, attached to doc. 59, again names the State, but it also names other defendants, various departments of the State of Florida executive branch of government.

Apparently the Clerk originally docketed document 59 as a motion. Plaintiff filed a motion to correct that docket entry as error, contending that his amended complaint did not require a motion for leave of court. Doc. 64. The motion to correct the "clerical error" was denied. Doc. 65. However, doc. 59 does not now appear as a pending motion on the docket.

Plaintiff's attempt to add defendants by amendment before the time to amend as a matter of course should be governed by Fed.R.Civ.P. 15 (a). Thus, with the exception of the State of Florida, who has been dismissed without leave to amend (with prejudice), could be made without leave of court. 6 Wright & Miller, Federal Practice and Procedure § 1479 and n. 10. The case therefore remains open with respect to the new defendants named in the first amended complaint.

Plaintiff seeks an order from this court that the judgment entered on the docket on May 22, 1995, is final and appealable. Doc. 63. When there are multiple claims or parties in an action, Fed.R.Civ.P. 54(b) provides:

> [T]he court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

Here, as to dismissal of the State of Florida, though dismissal was with prejudice, the court did not make an express determination or direct the entry of judgment as required by Fed.R.Civ.P. 54(b). While the judgment would have been final had Plaintiff not amended his complaint, it is not final now since he was entitled to amend his complaint without leave of court. Plaintiff, however, has presented insufficient reasons to be permitted to take an interlocutory appeal. Thus, he entry of judgment by the clerk should be vacated and Plaintiff's motion for a rule 54(b) certification, doc. 63, should be denied.

Plaintiff's motion against all defendants except the state, doc. 68, should also be denied. There has not been an entry of default by the Clerk and no showing by affidavit or other competent proof that these defendants have been effectively served with process. See, 10 Wright & Miller, Federal Practice and Procedure § 2682 (footnotes omitted).

It is therefore respectfully RECOMMENDED that Plaintiff's motion for a ruling that the judgment entered is final and appealable (doc. 63) be DENIED; that the final judgment entered by the clerk (doc. 62) be VACATED; that Plaintiff's motion for judgment by default (doc. 68) be DENIED; and that this cause be remanded to the undersigned for further proceedings.

IN CHAMBERS at Tallahassee, Florida, this *5th* day of July, 1995.

William C. Sherrill, Jr.
WILLIAM C. SHERRILL, JR.
UNITED STATES MAGISTRATE JUDGE

NOTICE TO THE PARTIES

A party may file specific, written objections to the proposed findings and recommendations within 15 days after being served with a copy of this report and recommendation. A party may respond to another party's objections within 10 days after being served with a copy thereof. Failure to file specific objections limits the scope of review of proposed factual findings and recommendations.

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

KAIMOWITZ

vs CASE NO. 94-10061 MMP

STATE OF FLORIDA, et al.

Referred to Magistrate Judge Sherrill on October 24, 1995
Type of Motion/Pleadings: Motion for discovery/scheduling order
Filed by pla on 10/5/95 Doc. No. 78
RESPONSE:
Filed by Deft on 10/24/95 Doc. No. 79

ROBERT A. MOSSING, CLERK
By Kathy Revell
Deputy Clerk

ORDER OF COURT

Accordingly, it is ORDERED this ***31st*** day of October, 1995: The requested relief is denied. *Discovery is hereby stayed until the district judge adjudicates the pending motions to dismiss.*

William C. Sherrill
WILLIAM C. SHERRILL JR.
UNITED STATES MAGISTRATE JUDGE

ENTERED ON DOCKET *10/31/95* By *KR*

Rules 58 & 79(a) FRCP or 32(b)(1) & 55 FRCP

Copies mailed to: *Quillen, Kaimowitz, Bowden*

OFFICE OF CLERK U.S. DISTRICT COURT NORTH DIST. FLA. 1995 OCT-31 PM 2:05

FILED

83

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION (sic)

GABE KAIMOWITZ,

Plaintiff,

vs. CASE NO. 4:94cv10061-MMP

STATE OF FLORIDA, et al.,

Defendants.

ORDER

Plaintiff's Motion for Relief (doc 101) and Objection to Order (doc 103) are set for oral argument before the undersigned on April 30, 1996, at 1:00 p.m. in the Alachua County Courthouse, Gainesville, Florida.

Fifteen minutes per side is allotted for oral argument.

DONE AND ORDERED this 8th day of April, 1996.

Maurice M. Paul,

MAURICE M. PAUL, CHIEF JUDGE

ENTERED ON DOCKET *4/8/96* By *tg*

Rules 58 & 79(a) FRCP or 32(b)(1) & 55 FRCP
Copies mailed to: *Quillen, Jennings, Kaimowitz, Oxman, tg, ge*

FILED 110

OFFICE OF
CLERK
U.S. DISTRICT
COURT
NORTH DIST. FLA.
TALLHASSEE, FLA
1996 APR-8 PM 4:30

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

Kaimowitz

vs CASE NO. 94-10061 MMP

State of Florida, et al.,

REFERRAL AND ORDER

Referred to Judge Maurice Paul on April 17, 1996

Motion/Pleadings: Motion to withdraw state claims without prejudice

Filed by pla on 1/10/95 Doc. #108

RESPONSES:

Doc. #

on Doc. #

ROBERT A. MOSSING, CLERK

1 BY

LC (1 OR 2) Deputy Clerk: Kathryn Revell

ORDER OF COURT

It is ORDERED this ***19th*** day of *April*, 1996,
the requested relief is *set for oral argument on April 30, 1996 in the Alachua County Courthouse, Gainesville, Florida.*

Maurice M. Paul

MAURICE M. PAUL
CHIEF UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET *4/19/96* By *KR* OFFICE OF CLERK
Rules 58 & 79(a) FRCP or 32(b)(1) & 55 FRCP U.S. DISTRICT
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NORTH. DIST.FLA
TALLAHASSEE, FL

FILED *113* 1996 APR-19 PM 1:11

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

Kaimowitz

vs CASE NO. 94-10061 MMP

State of Florida, et al.,

REFERRAL AND ORDER

Referred to Judge Maurice Paul on April 18, 1996
Motion/Pleadings: Motion for continuance of hearing
Filed by pla on 4/18/96 Doc. #112
RESPONSES:
dft on 4/17/96 Doc. #111
on Doc. #

ROBERT A. MOSSING, CLERK

1 BY

LC (1 OR 2) Deputy Clerk: Kathryn Revell

ORDER OF COURT

It is ORDERED this ***19th*** day of *April*, 1996,
the requested relief is *GRANTED-All hearings set for April 30, 1996 at 1:00 PM are hereby RESET FOR MONDAY APRIL 29, 1996, at 11:00 AM at the Alachua County Courthouse.*

Maurice M. Paul,
MAURICE M. PAUL
CHIEF UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET *4/19/96* By *KR*
Rules 58 & 79(a) FRCP or 32(b)(1) & 55 FRCP
Copies mailed to: *Quillen, Jennings, Kaimowitz, Oxman*

OFFICE OF CLERK
U.S. DISTRICT COURT
NORTH. DIST. FLA
TALLAHASSEE, FLA

FILED *114* 1996 APR-19 PM 1:11

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

GABE KAIMOWITZ
Plaintiff,

vs.

STATE OF FLORIDA
Defendant (sic).

Docket No.
4:94CV10061-MP
Gainesville, Florida
April 29, 1996
11:02 a.m.

TRANSCRIPT OF MOTION FOR CONTINUANCE
BEFORE THE HONORABLE MAURICE M. PAUL
CHIEF UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: GABE KAIMOWITZ, Pro Se
Post Office Box 140119
Gainesville, Florida 32614

For the Defendant: Assistant Attorney General
State of Florida
JANICE L. JENNINGS, Esq.
Office of the Attorney General
The Capitol-PL-01
Tallahassee, Florida 32399-1050

Court Reporter: Mark N. Stuart, RPR-CPE

Mark N. Stuart
United States Court Reporter
U.S. Courthouse-Box 3
110 East Park Avenue
Tallahassee, Florida 32301
904 224-0370 (phone/fax)
mstuart@ix.netcom.com(e-mail)

2 THE COURT: You all have a seat a moment and we'll clear you a space. We're here for several reasons, some of which were brought about on request for continuance and rescheduling, and there have been some motions filed directly to that. But we're here also, Mr. Kaimowitz, because these pleadings in great respect should be entirely stricken by this Court. They are scurrilous pleadings. You have a right to present matters for consideration on any legal claim that you think you have. You do not enjoy the privilege of abusing individuals and court officers in your pleadings. Your pleadings are replete with such matters. For instance, you say: The primary purpose of an order was solely to protect this biased Court from timely consideration. I'm going to strike every pleading you have that contains such allegations, and I'm going to give you 20 days--20 days to file whatever you want in the way of a statement of claim in the complaint. It better not have anything in it but legal matters. If you put any such statements in any future pleading, I will cite you for contempt.

Now, do you understand me?

MR. KAIMOWITZ: Yes, I do, Your Honor.

THE COURT: All right. All of these documents--and I'll recite them in my order--are to be stricken. You will be given 20 days to file just a straight claim, whatever your claim is. And whatever that

3 claim is, the government is--the state is going to file an immediate reply. This matter is going to be set for a final hearing within three to four months.

Do you understand me?

MR. KAIMOWITZ: Yes.

THE COURT: Does the state understand me?

MS. JENNINGS: Yes.

MR. KAIMOWITZ: May I not stand by my first amendment (sic) (NOTE: amended) complaint which

THE COURT: You will not stand by anything. These are stricken. And I better not see any such language in any future

pleading in this or any other case. If you have a legal claim, we're going to hear your claim. You say you're a lawyer. You ought to know that. I'm telling you, you better do that. This hearing is over.

MS. JENNINGS: Your Honor, if I may, there's one additional matter that I would like to bring to the attention of the Court.

THE COURT: State it.

MS. JENNINGS: Also on Friday afternoon, Mr. Kaimowitz had made a claim to have served the state with a motion to withdraw the claims without prejudice. We've never received it.

THE COURT: He'll furnish you that.

4 CERTIFICATE

STATE OF FLORIDA)
COUNTY OF LEON)

I, Mark N. Stuart, RPR, United States Court Reporter in Tallahassee, Florida, do hereby certify as follows:

THAT I correctly reported in computer-aided machine shorthand the foregoing transcription, or under my supervision, and that the foregoing pages numbered 1 through 4, both inclusive, contain a full, true and correct transcript of the proceedings on said occasion;

THAT I am neither of kin nor of counsel to any party involved in this matter, nor in any manner interested in the results thereof.

DATED THIS 6th DAY OF MAY 1996.

Mark N. Stuart
Mark N. Stuart, RPR
United States Court Reporter

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

GABE KAIMOWITZ,

Plaintiff,

v. CASE NO. 94-10061-MMP

STATE OF FLORIDA,
et al. (sic)

ORDER

A status conference was held on Monday, April 29, 1996. At the conference, the Court admonished Plaintiff to refrain--in all respects--from submitting pleadings to the Court which include scurrilous remarks intended to abuse various individuals and court officers. Plaintiff was further informed that while he is certainly entitled to file pleadings which contain those factual allegations which he deems relevant to his complaint, he is not entitled to insert superfluous, abusive language therein.

Accordingly, the entirety of Plaintiff's pleadings in this cause shall be STRICKEN. Plaintiff shall be given leave to file an amended complaint, without prejudice to his case, on or before **Monday, May 20, 1996 at 5:00 p.m.** Failure to file on or before that date and time, however, shall be considered grounds for dismissal.

ENTERED ON DOCKET *5/2/96* By *KR* OFFICE OF CLERK
Rules 58 & 79(a) FRCP or 32(b)(1) & 55 FRCP U.S. DISTRICT
Copies mailed to: *Quillen, Jennings,* CO URT
Kaimowitz, Oxman NORTH. DIST.FLA
TALLAHASSEE, FLA

FILED *120* 1996 MAY-2 PM 2:35

Defendants shall respond to Plaintiff's amended complaint within 10 days after the date on which they are served with a copy of the amended complaint.

DONE AND ORDERED this *2nd* day of *May*, 1996.

Maurice M. Paul,

MAURICE M. PAUL, CHIEF DISTRICT JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

Kaimowitz

vs CASE NO. 94-10061 MMP

State of Florida, et al.,

REFERRAL AND ORDER

Referred to Judge Maurice Paul on April 23, 1996
Motion/Pleadings: Emergency Motion for stay of proceedings pending resolution of appeal on preliminary relief
Filed by pla on 4/23/96 Doc. #115
RESPONSES:
on Doc. #
on Doc. #

ROBERT A. MOSSING, CLERK
1 BY
LC (1 OR 2) Deputy Clerk: Kathryn Revell

ORDER OF COURT

It is ORDERED this ***14th*** day of *May*, 1996,
the requested relief is *DENIED.*

Maurice M. Paul,
MAURICE M. PAUL
CHIEF UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET *5/15/96* By *KR*
Rules 58 & 79(a) FRCP or 32(b)(1) & 55 FRCP
Copies mailed to: *Quillen, Jennings, Kaimowitz, Oxman, ECCA*

OFFICE OF CLERK
U.S. DISTRICT COURT
NORTH. DIST. FLA
TALLAHASSEE, FLA

FILED *124* 1996 MAY 15 AM 10:51

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

Kaimowitz

vs CASE NO. 94-10061 MMP

State of Florida, et al.,

REFERRAL AND ORDER

Referred to Judge Maurice Paul on May 29, 1996

Motion/Pleadings: Motion for enlargement of time to respond to second amended complaint. Motion for summary judgment and Motion with attachment up to and including 6/17/96

Filed by deft. on 5/28/96 Doc. #133

RESPONSES:

_____ on _____ Doc. #_____

_____ on _____ Doc. #_____

ROBERT A. MOSSING, CLERK

1_____ BY _____

LC (1 OR 2) Deputy Clerk: Kathryn Revell

ORDER OF COURT

It is ORDERED this ***30th*** day of *May*, 1996,

the requested relief is *GRANTED--time is extended until June 17, 1996.*

Maurice M. Paul,

MAURICE M. PAUL

CHIEF UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET *5/15/96* By *KR*

Rules 58 & 79(a) FRCP or 32(b)(1) & 55 FRCP

Copies mailed to: *Quillen, Jennings, Kaimowitz, Oxman, ECCA*

FILED *134*

OFFICE OF CLERK
U.S. DISTRICT COURT NORTH. DIST. FLA
TALLAHASSEE, FLA
1996 MAY 15 AM 10:51

GABE KAIMOWITZ, Fla Bar 0633836
P.O. 140119, Gainesville, Fla., 32614
(352) 375-2670
Plaintiff attorney pro se
June 22, 1996

Office of the Attorney General
Att: Janice L. Jennings, esq.
The Capitol-PL-01
Tallahassee, Florida 32399-1050

RE: KAIMOWITZ v. STATE OF FLORIDA, et al., #94-10061-MMP

NOTICE PURSUANT TO RULE 11, F.R.Civ.P.

To the Office of the Attorney General:

A 19-page motion/memorandum of law to dismiss Plaintiff's ADEA complaint by omission and commission misleads the Court and others about applicable case and statutory law governing the issue(s) raised therein. In light of the response submitted by Plaintiff to the Court, it should be obvious that Florida has no sovereign immunity from citizen claims in federal court. See discussion of judicial interpretation of Gregory v. Ashcroft at all relevant levels, and federal civil rights statutory abrogation of immunity in 1987, which were blithely ignored by you.

Further, bad faith is evidenced by this Office's participation and losing role for the State in two of the relevant cases--Lussier v. Dugger, and Ellen S. v. The Florida Board of Bar Examiners--and its failure to cite either her, or statutory authority, set forth therein. For the foregoing reasons, the motion to dismiss should be withdrawn within 21 days from this date, or sanctions will be sought by Plaintiff pursuant to Rule 11, F.R.Civ.P. procedures. Plaintiff also would ask that the Defendants promptly answer the second amended pleading, even in advance of court order, since its apparent last gasp at relief by motions to dismiss, etc., must fail on its face.

Should no adequate timely response be provided to the Court and to Plaintiff about the foregoing, Plaintiff also will seek to introduce this letter including this notice to Defendants that the Office of the Attorney General twice acted this year in bad faith to elicit settlement offers without any intent to respond. On the second occasion, the transparency of Defendants' motive to seek something other than settlement became apparent when this office began to use a telephone conversation as an improper opportunity for discovery. In each instance, including the first in writing by Plaintiff, this Office promised and did not respond for its clients at any time. No oral rejection by the AG now would be trusted. It is assumed that no settlement ever was considered in good faith. For the foregoing reasons, any actual settlement discussions likely should focus on compensation within statutory guidelines, rather than any job opportunity for Plaintiff in the future.

Sincerely,

Gabe Kaimowitz

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

Kaimowitz

vs CASE NO. 94-10061 MMP

State of Florida, et al.,

REFERRAL AND ORDER

Referred to Judge Maurice Paul on ----------

Motion/Pleadings: DEFENDANT'S MOTION FOR ENLARGEMENT OF TIME TO RESPOND TO MOTION PURSUANT TO 28 U.S.C. SECTION 455a

Filed by DEFENDANTS on 6/20/96 Doc. #138

RESPONSES:

_____ on _____ Doc. #_____

_____ on _____ Doc. #_____

ROBERT A. MOSSING, CLERK

1_____ BY _____

LC (1 OR 2) Deputy Clerk: Kathryn Revell

ORDER OF COURT

It is ORDERED this ***30th*** day of *June*, 1996,
the requested relief is *GRANTED*--_____

Maurice M. Paul,

MAURICE M. PAUL
CHIEF UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET *7/1/96* By *KR* OFFICE OF CLERK
Rules 58 & 79(a) FRCP or 32(b)(1) & 55 FRCP U.S. DISTRICT
Copies mailed to: *Quillen, Jennings,* COURT NORTH. DIST.FLA
Kaimowitz, Oxman, TALLAHASSEE, FLA
FILED *141* 1996 JULY-1 AM 11:26

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

Miguel J. Cortez
Clerk

56 Forsythe Street, N.W.
Atlanta, Georgia 30303
August 29, 1996

In Replying Give
Number of Case
And Names of Parties

MEMORANDUM TO COUNSEL OR PARTIES:

RE: 96-3116 Kaimowitz v. State of Florida
DC DKT NO.: 94-10061 CV-MMP

The referenced case has been docketed in this court. Please use the appellate docket number noted above when making inquiries....

Counsel participating in this appeal should complete and return the enclosed appearance form within fourteen (14) days. [11th Cir. R. 46-1]. Only counsel who enter an appearance will be noted on the docket. Persons appearing pro se need not file an appearance form.

Sincerely,
Miguel J. Cortez
MIGUEL J. CORTEZ, Clerk

Reply to: Vicki Berrong (404) 331-3833

This appeal has been consolidated with appeal number 96-2478.
c: District Court Clerk

Encl.
(2/95)

DKT-1

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

GABE KAIMOWITZ,
Plaintiff,

v. CASE NO. GCA 94-10061-MMP

STATE OF FLORIDA, et al.,
Defendants.

ORDER

This cause comes before the Court upon the following motions:

(1) Plaintiff's motion for modification of order discharging order to show cause and alteration of the letter accordingly (Doc. 154)—to which Defendants have not responded; and (2) Defendants' motion for enlargement of time to respond to discovery requests (Doc. 156)—to which Plaintiff has responded (Doc. 157).

For the reasons briefly outlined below, both of these motions are DENIED.

DISCUSSION:

I. Plaintiff's motion for modification (Doc. 154):

Plaintiff moves the Court pursuant to Rule 60(b), Federal Rules of Civil Procedure, for modification of the Court's order dated September 11, 1996, and alteration of the underlying order dated July 29, 1996. On May 2, 1996, the

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ordered Plaintiff to refrain from asserting superfluous and abusive language in future filings made in this case. See Doc. 120. Plaintiff failed to abide by the Court's order, filing a second amended complaint (Doc. 125) and response to Defendants' motion to dismiss (Doc. 139), which each contained superflous and abusive langauge. Based upon Plaintiff's failure to comply with the Court's May 2, 1996 order, the Court struck Plaintiff's second amended complaint pursuant to Rule 12(f), Federal Rules of Civil Procedure, ordered Plaintiff's cause dismissed without prejudice, and ordered Plaintiff to show cause why he should not be held in contempt. See Doc. 145. Based upon Plaintiff's response to the show cause order (see Doc. 148), and taking into consideration that Plaintiff's cause had already been dismissed and his case closed, the Court discharged its order to show cause. See Doc. 153.

Plaintiff now contends that the Court dismissed Plaintiff's case without prejudice based upon a finding of contempt. Plaintiff maintains that the Court made this finding without giving Plaintiff an opportunity to respond. Therefore, Plaintiff seeks modification and alteration of the Court's order to indicate these facts, discharge any finding of contempt, and reopen his case. See Doc. 154.

As set out above, and specifically outlined in the Court's order of July 29, 1996 (Doc. 145), the Court did not dismiss Plaintiff's case as a punishment for contempt. Instead, the Court dismissed Plaintiff's cause for his willful and deliberate failure to abide by two express directives of the Court (1) an oral admonishment at the May 2, 1996, status conference to refrain from filing pleadings or other documents containing frivolous and abusive langauge (see Doc. 122) (transcript of status conference); and (2) a written order of the Court with the same instruction (see Doc. 120). The Local Rules provide that the Court may, upon its own motion, dismiss a case without prejudice where a plaintiff has failed to

abide by a court order. See N.D. Fla. Loc. R. 41.1(B). Consequently, when the Plaintiff continued to file documents and pleadings containing frivolous and abusive language--in the fact of the Court's express directives to the contrary---the Court dismissed Plaintiff's case, without prejudice to Plaintiff to refile. As a result, Plaintiff's motion for modification and alteration must be, and is, DENIED.

The Court again reminds Plaintiff that in any new action he might file in this Court under the same or other operative facts, he must abide by the limitations on his conduct set forth in the Court's September 11, 1996 order (Doc. 153).

II. Defendants' motion for enlargement of time (Doc. 156):

Defendants have moved for enlargement of time to respond to Plaintiff's discovery requests (Doc. 156). However, since this cause has already been dismissed without prejudice, Defendants' motion is DENIED AS MOOT.

Based on the foregoing, it is hereby

ORDERED AND ADJUDGED:

1. Plaintiff's motion for modification of order discharging order to show cause and alteration of the latter accordingly (Doc. 154) is DENIED.

2. Defendants' motion for enlargement of time to respond to discovery requests (Doc. 156) is DENIED AS MOOT.

DONE AND ORDERED this *15th* day of October 1996.

Maurice M. Paul

MAURICE M. PAUL, CHIEF JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

Kaimowitz

vs CASE NO. 94-10061 MMP

State of Florida, et al.

REFERRAL AND ORDER

Referred to Judge Maurice Paul on November 15, 1996
Motion/Pleadings: Motion to correct order dated 10/15/96 and motion for recusal of Judge
Filed by Pla. on 10/21/96 Doc. #159
RESPONSES: on Doc. #
on Doc. #

ROBERT A. MOSSING, CLERK
1 BY
LC (1 OR 2) Deputy Clerk: Kathryn Revell

ORDER OF COURT

It is ORDERED this ***18th*** day of *November*, 1996,
the requested relief is set for oral argument on November 26, 1996 at 1:00 p.m. Gainesville, Florida. 30 Minutes allowed for argument.

Maurice M. Paul,
MAURICE M. PAUL
CHIEF UNITED STATES DISTRICT JUDGE

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

Kaimowitz

vs CASE NO. 94-10061 MMP

State of Florida, et al.

REFERRAL AND ORDER

Referred to Judge Maurice Paul on November 22, 1996
Motion/Pleadings: Emergency motion for stay of November 26 hearing ordered sua sponte in the court while this case is on appeal
Filed by pla. on 11/22/96 Doc. #161
RESPONSES:
on Doc. #
on Doc. #

ROBERT A. MOSSING, CLERK
1 BY
LC (1 OR 2) Deputy Clerk: Kathryn Revell

ORDER OF COURT

It is ORDERED this ***25th*** day of *November*, 1996,
the requested relief is *DENIED*

Maurice M. Paul,
MAURICE M. PAUL
CHIEF UNITED STATES DISTRICT JUDGE

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORID
TALLAHASSEE (sic) DIVISION

GABE KAIMOWITZ
Plaintiff,

vs.

STATE OF FLORIDA, et al.,
Defendant (sic).

Docket No.
4:94CV10061-MMP
Gainesville, Florida
November 26, 1996
12:55 p.m.

TRANSCRIPT OF HEARING (**EXCERPTS AS NOTED**)
HELD BEFORE THE HONORABLE CHIEF UNITED
STATES DISTRICT JUDGE MAURICE M. PAUL

APPEARANCES:

For the Plaintiff:

GABE KAIMOWITZ, ESQUIRE
Post Office Box 140119
Gainesville, Florida 32614

For the Defendant:

JANICE L. JENNINGS, Esq.
Assistant Attorney General
State of Florida
Office of the Attorney General
The Capitol-PL-01
Tallahassee, Florida 32399-1050

Court Reporter:

Mark N. Stuart, RPR-CPE
Official Court Reporter
Post Office Box 1328
Gainesville, Florida 32602
352-380-0399

2-THE COURT: Be seated, please. Kaimowitz v. State of Florida. Your motion, Mr. Kaimowitz.
MR. KAIMOWITZ: Gabe Kaimowitz, pro se, in this action. I would like to bring Your Honor up to date on the chronology. First, I would ask Your Honor whether or not you will grant the stay of this proceeding? For the record, the 11th Circuit notified me at noon today that they had denied that motion. And I'm asking this Court as well, since I did file papers--
THE COURT: I denied it yesterday, Mr. Kaimowitz.
...
8-(MR. KAIMOWITZ): (The) first hearing in this case... prevented me to this date from having a deposition in the case of United States vs. Orlando, 95-204-CIV-10--
MS. JENNINGS: We would object to that case and--any procedures in that case are not at all relevant.
THE COURT: Let him have his say.
MR. KAIMOWITZ: --Middle District of Florida, 1995, venue transferred from the Jacksonville Division, 94-284-CIV-J Middle District of Florida, 1994. That case is now coincidentally set for trial on the 7th. I have a conflict then that I've apprised that court. Your Honor in the past has been associated, as I've said in the papers, with Ackerman, Senterfitt. You acknowledged that in Tom Cardwell's presence, which I put in my affidavit and the like. The judge in Orlando is a former partner at Ackerman, Senterfitt.
9--MS. JENNINGS: Again, Your Honor, I realize that, you know, Mr. Kaimowitz has made certain statements in prior documents that he has filed with the court, in prior motions for recusal that he has filed. Your Honor, this is not even close to being relevant to issues or matters of fact or law raised in this particular case, and I must strongly object.
THE COURT: He'll have his say....
17--MR. KAIMOWITZ: Nothing further, Your Honor.
THE COURT: We'll be in recess.
(The hearing was concluded at 1:21 p.m.)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

GABE KAIMOWITZ
Plaintiff,

vs. CASE NO. GCA 94-10061-MMP

STATE OF FLORIDA, et al.,
Defendant (sic).

ORDER

This matter is before the Court on Plaintiff's Motion for Relief Pursuant to Rule 60, Fed.R.Civ.P. (doc. 159). That Rule allows for the modification of a court order to correct clerical or other errors. The order which plaintiff seeks to correct is the Court's order entered October 15, 1996 (doc. 120). Among other things, that order denied as moot a motion by defendant entitled "Motion for enlargement of time to respond to discovery requests." (doc. 156). The plaintiff points out that he had not filed discovery requests at the time of the defendant's motion. The defendants agreed and have since indicated that the inclusion of the words "to respond to discovery requests" was inadvertent and that no discovery requests had been made by plaintiff at the time of defendant's motion.

In his Rule 60 motion, Plaintiff also moved for recusal of the undersigned. As an initial matter, the motion violates

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Janice Jennings, Gabe Kaimowitz, GAINESVILLE, FLA
Michelle Oxman, GE, BKP 96 DEC-3 PM 3:37
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the Court's directives contained in its May 2, 1996, and September 12, 1996 orders. In the May 2, 1996 order, the Court admonished the Plaintiff "to refrain--in all respects--from submitting pleadings to the Court which include scurrilous remarks intended to abuse various individuals and court officers." The Court also instructed Plaintiff "that while he is certainly entitled to file pleadings which contain those factual allegations which he deems relevant to his complaint, he is not entitled to insert superfluous, abusive language therein." Likewise, in the September 12, 1996 order the Court directed:

> If the plaintiff believes he has grounds for recusal of the Court, then he shall include such grounds in a separate motion for recusal--and not in other unrelated pleadings, motions or other filings.

Rule 60 only addresses the correction of court orders; it does not contain any reference to the recusal of judges. Nevertheless, plaintiff included his motion for recusal in his Rule 60 motion, in violation of the Court's September 12, 1996 order. The language also violates the May 2, 1996 order in that it is scurrilous, superfluous and abusive.

Plaintiff's argument that his instant motion, as well as his prior pleadings, were not scurrilous, superfluous or abusive, is unfounded. The prior pleadings as well as the instant motion, are replete with scurrilous, superfluous, and abusive language. In his second amended complaint, for example, Plaintiff refers to the following matters which are completely unrelated to the plaintiff's present ADEA claim: another case over which the Court has presided, Sorba v. North Florida Farm Credit Services, Inc., No. 93-10015 (N.D. Fla. 1994), [Compl. at 2]; Plaintiff's pending motion to recuse the Court [see id. at 1-2]; dismissal of the University of Florida as a defendant in this cause "in part because Chief Judge Maurice Paul received undergraduate and law degrees there" [id. at 4]; argument that Plaintiff does not have to be a member of the Florida Bar, as

required by the Court for Plaintiff to appear in this cause, "since Plaintiff appears here as a party pro se" [id. at 7]; and statements that this Court has denied Plaintiff preliminary injunctive relief "without opinion," and that plaintiff has appealed that ruling to the Eleventh Circuit [id. at 11]. Likewise, on June 25, 1996, Plaintiff filed a response (Doc. 139) to Defendants' motion to dismiss (Doc. 136), containing inferences that Defendants' counsel have obstructed the progress of this cause, references to needing adjudication before "an unbiased judge," and repeated demands for recusal. All of these claims, which impugned the Court and opposing counsel, were, and are, unrelated to the plaintiff's present ADEA claim and the specific pleadings in which they appeared.

Plaintiff's recusal motion fares no better when considered on its merits. 28 U.S.C. § 455(a) requires a federal judge to "disqualify himself in any proceeding in which his impartiality might reasonably be questioned." As the Supreme Court stated in Liteky v. United States, 114 S.Ct. 1147, 1157 (1994), "judicial rulings alone almost never constitute valid basis for a bias or partiality motion." Instead, the plaintiff must show a predisposition on the part of the Court that "is so extreme as to display clear inability to render fair judgment." *Id.* at 1155. In his pleadings, plaintiff supports his claims for recusal simply by listing a series of decisions by the Court which were adverse to him. He alleges no "extrajudicial source" of any bias on the part of the Court which motivated the Court's decisions, and these decisions themselves in no way reveal a predisposition of the Court that is "so extreme as to display clear inability to render fair judgment." Instead, it is clear even from Mr. Kaimowitz's brief that the Court has given him repeated chances to amend his complaint and tailor his conduct so as to conform with the Federal Rules of Civil Procedure. Mr. Kaimowitz has simply, and repeatedly, failed to take advantage of those opportunities and thus has received repeated

admonishment from the Court.

All of the acts complained of by Mr. Kaimowitz occurred in the course of judicial proceedings, and neither (1) relied upon knowledge acquired outside such proceedings; or (2) displayed deep-seated and unequivocal antagonism that would render fair judgment impossible. Accordingly, it is hereby

ORDERED AND ADJUDGED:

1. The motion for relief pursuant to Rule 60, Fed.R.Civ.P. (doc. 159) is GRANTED IN PART and DENIED IN PART. The order of October 15, 1996 is amended to remove the words "to respond to discovery requests" from the title of defendant's motion found at docket number 156.

2. The motion for recusal is DENIED.

3. The plaintiff is ORDERED to show cause, in writing, if any he may have, why he should not be sanctioned or held in contempt of this court for his repeated violations of this court's prior orders and admonishments not to include superfluous, scurrilous or abusive language in his pleadings. The written response shall be filed by December 15, 1996; hearing on the SHOW CAUSE ORDER is set for December 17, 1996, at 2:00 p.m. in the Federal Courthouse, Gainesville, Florida.

DONE AND ORDERED this **3rd** day of December, 1996.

Maurice M Paul

MAURICE M. PAUL, CHIEF DISTRICT JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

Kaimowitz

vs CASE NO. 94-10061 MMP

State of Florida, et al.,

REFERRAL AND ORDER

Referred to Judge Maurice Paul on 16 Dec 1996

Motion/Pleadings: PLAINTIFF'S MOTION FOR CONTINUANCE TO A REASONABLE TIME AFTER DECEMBER 15-17, 1996 TO RESPOND TO AN ORDER TO SHOW CAUSE WHY THIS ATTORNEY SHOULD NOT BE HELD IN CONTEMPT----------

Filed by pla. on 11 DEC 96 Doc. #18

RESPONSES:

_____ on _____ Doc. # _____

_____ on _____ Doc. # _____

ROBERT A. MOSSING, CLERK

1 BY _____

LC (1 OR 2) Deputy Clerk: Kathryn Revell

ORDER OF COURT

It is ORDERED this ***17th*** day of *December*, 1996,
the requested relief is *DENIED*---

Maurice M. Paul,

MAURICE M. PAUL
CHIEF UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET *12/17/96* By *BP*
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FILED *162* 96 DEC 17 PM 12:05

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

GABE KAIMOWITZ
Plaintiff,

vs.

STATE OF FLORIDA, et al.,
Defendants.

Docket No.
4:94CV10061-MMP
Gainesville, Florida
December 17, 1996

TRANSCRIPT OF HEARING (**EXCERPTS AS NOTED**)
HELD BEFORE THE HONORABLE CHIEF UNITED STATES DISTRICT JUDGE MAURICE M. PAUL

APPEARANCES:

For the Plaintiff: GABE KAIMOWITZ, ESQUIRE

Post Office Box 140119
Gainesville, Florida 32614

For the Defendant: JANICE L. JENNINGS, Esq.
Assistant Attorney General
State of Florida
Office of the Attorney General
The Capitol-PL-01
Tallahassee, Florida 32399-1050

Court Reporter: Mark N. Stuart, RPR-CPE
Official Court Reporter
Post Office Box 1328
Gainesville, Florida 32602
352-380-0399

2--THE COURT: Be seated, please. We're here pursuant to an order that was entered by the Court on the 3rd day of December ordering Mr. Kaimowitz to show cause why he should not be sanctioned or held in contempt for his repeated violations of prior orders of this court and its admonitions concerning language that keep appearing in his pleadings....
4--MR. KAIMOWITZ:....I feel that Your Honor is an incredibly respected judge. I have talked to opposing counsel who I have every reason to respect. I can also tell you that until fairly recently anyway, I was an honored attorney continuously from 1967 when I was graduated and certainly when I was admitted to the bars in 1969. So that I am totally at a loss for what I'm about to say. I have never in my life experienced what has occurred with regard to Kimel v. Florida Board of Regents. I'm not 5--understanding something. I mean, that is clear. To my mind, Your Honor, what happened with Kimel substantiates every one of the allegations that Your Honor has suggested I have made without usually being very specific, and I'll to that with regard to the last order. I'll try to track it. It's clear that an attorney who does what Ms. Jennings did--and the case that I would cite, and I would quote, called Jorgenson vs. County of Volusia, which was affirmed on appeal, but I'll read from Judge Kendall Sharp's--
MS. JENNINGS: I want to put our objection on the record. We realize that this is Mr. Kaimowitz' s opportunity to respond to the show cause order. And he seems to be about to travel down a lane like the one that he has traveled that has led him here today. Again, the disparaging statements, this kind of seems to be pointed more at his opposing counsel rather than at the court. These are similarly the kind of scurrilous remarks that he seems to be going toward. We would ask that he focus on addressing why sanctions should not be imposed against him for his conduct that the court has addressed in its order.

5 (cont.) THE COURT: I hear your objection. This is his opportunity to say why he thinks he shouldn't be sanctioned, and we'll hear him out.
MR. KAIMOWITZ: I'm sorry? The objection was 6-sustained or overruled? Can I proceed?
THE COURT: Proceed, please.
MR. KAIMOWITZ: I will try. I think I have cited Jorgenson v. County of Volusia, 625 F. Supp. 1543, at 1548, affirmed on appeal. And I don't have the cite handy. It is in the papers that have been submitted to Your Honor. Now to come back to the specifics of the order of December 3rd and the points that were made. The critical point, first of all, on page 3 of Your Honor's order, it states: Likewise--quote, likewise on June 25th, 1996, plaintiff filed a response, Document 139, to defendant's motion to dismiss containing inferences that defendant's counsel have obstructed the progress of this cause. I claimed here and on the record that between June 17th, when opposing counsel filed her motion to dismiss, until at least your order of dismissal of July 29th , 1996, that opposing counsel was obligated to disclose Kimel. Kimel was one hundred percent diametrically opposed to the position that was taken by the same assistant attorney general in her motion to dismiss. I did file, in addition to the quote that I just made, a request, and a notice that was never answered, because of Your Honor's subsequent dismissal and because of opposing counsel's continuous repetitive requests for continuance, which to my mind at this point is clear were done until Your Honor 7-prevented me from pursuing the Rule 11 sanctions against opposing counsel. So I say that opposing counsel has obstructed the progress of this case. Repeated demands for recusal. They're based on two things, Your Honor. And I think that is the heart of what--of what we're here about today. The issue of my allegations of bias that Your Honor found erroneous related to the first amended complaint, pertain continuously to the magistrate in this case, who later it was

7 (cont.) disclosed that he receives a pension from defendant. Section 28 U.S.C. 455 (b) makes very clear that he should have stepped aside. I've briefed continually the procedure where he not only did not step aside, but did not rule on the motion until Your Honor referred it back to him. So that was where the original issues of an unbiased judge arose. Then, Your Honor, also it turned out, apparently has also been employed by the defendant for some years. And to my knowledge, was informed that you had, in fact, received a lump sum pension again from the defendant.

THE COURT: Well, that's wrong. I never received any pension from the defendant.

MR. KAIMOWITZ: Then all I can tell you is that I was given erroneous information by the state. I did call. And the reason that becomes important is that later you say in your

8--order, quote, he alleges, quote, no extrajudicial source, unquote, of any bias on the part of the court which motivated the Court's decision. I claim at this point that the discovery of Kimel makes clear that that's outside the province of this case. But Your Honor has also faulted me for citing Sorba, where I alleged the same way, that it has seemed to me outside the context of this case. And I put those in papers. Now to my knowledge, with the except--and I--for example, you mentioned earlier in the opinion: Dismissal of the University of Florida as a defendant in this cause, in part, because Judge Maurice Paul received undergraduate and law degrees there. That is based on precedent, Your Honor. I filed a similar paper in the U.S. District Court in Illinois in 1991. The judge did step aside, and we reached a settlement. The judge in that case had graduated from the University of Illinois--both undergraduate and law degree--and the judge had stepped aside. Now, when I go on precedent and when we're making reference outside the judicial record, and I'm told that I'm alleging--and it's wrong for me to allege that--and then I'm also told that I have alleged no extrajudicial source for any bias,

8 (cont.) I'm at a loss as to how to proceed in the context of what I understand law to be. Not judicial conduct, I think I 9--understand what law is supposed to be. Okay. Then Your Honor suggests that you've given me repeated chances to amend my complaint. I amended my complaint. You found it scurrilous after defense counsel never mentioned--she filed an answer, a motion to dismiss or whatever. To this day, except for repeating your generality that I have somehow filed abusive language or made abusive statements, the assistant attorney general has not pointed to anything, certainly not before your order of July 29th which dismissed the case.

I go to get a language expert, because I could not begin to comprehend how you could have found that to be scurrilous, because I'm an extraordinarily careful penman, Your Honor, and I was really careful to my mind in the second amended complaint. Now I've gotten sloppy, and I will concede the one point, where if Your Honor wishes to find me in contempt, you may do so, because I will concede that that may be why we're here, and I went too far, but I will only say that it was in the context of not understanding what was happening. And that is, I do admit that Your Honor admonished me not to include issues of recusal in papers other than those with regard to recusal. In the motion for reconsideration that 10--that was proposed the last time, there was, in fact a request that--clearly what I was asking, to my mind, was for Your Honor to consider yourself as to whether or not you would recuse yourself. That is, I was not making the separate motion. To my mind, a separate motion had already been pending since May of 1996. Before this, Your Honor had not dismissed it, and it had not been ruled upon. And therefore--but I will say that Your Honor was clear and I accept that it was clear. And I also said I apologize for that, certainly because I did it inadvertently, but I did it, and I can't dispute that I did it....

...

11--Related to the ADEA, your suggestion before Kimel that none of this was related to my claims under the Age Discrimination in Employment Act, I think is obviated by Kimel. It is all related. That it is my sense, that this state, that the EEOC from my experience in other age discrimination cases is reluctant if--in all respects to admit or to acknowledge at any time a systemic, systematic age discrimination that prevails in this state and will do anything--which was evidenced in the EEOC proceedings for two years before I came to this court--in order to prevent me from even making these allegations. And I certainly believe, Your Honor, that your dismissal of July 29th, which apparently took this case out of the context of the ADEA, is not consonant with the intention of that law which was to prevent age discrimination, and this simply is a continuation of that attempt to silence me....

17-In appeal the appellate counsel has alleged that I have accused this court of being a Nazi. I asked him to find a single allegation. He could not find it. There isn't such a thing. So I do not know, with the exception of what occurred last time, which is why I think that transcript is critical, about me having something to be afraid of in a certain context, that I think something has to be done to simply explain this case to me, unless the intent is to simply both drive me insane and drive me out of this field without following the law. I just want to know what it is, what my conduct was that is so objectionable, what the words were that I said that were so objectionable. I'm entitled to that. And except for--and I say, Your Honor has outlined in your order to show cause that which you previously outlined. And the only other instance that I'm aware of is an allegation of bias that you quoted in the transcript on April 29th. I'm entitled to know the specifics. And I again would urge Your Honor, if you're going to sanction me today without counsel and without the availability of the tape, that it be referred to the Florida Bar, and that I stand there to show cause why I should not be disbarred. Thank you....

18 (cont.)-THE COURT: Let me ask you something. Why can't you just simply state the legal matters necessary, you know, or the facts to state a legal claim as I've told you to do? Why all of this other extraneous stuff? Why do you do that?

19--MR. KAIMOWITZ: To my mind, it's called protecting the record.

THE COURT: No, that is not protecting the record....Especially when I told you not to do it. Why did you keep doing it?

MR. KAIMOWITZ: I claim I didn't keep doing something that--I admit to Your Honor that in the motion--the Rule 60 motion for recusal, that I did do it in that instance. And I agree with your Honor on that. But Your Honor, again, is generally saying to me: I keep repeating it when you told me not to. And what is it that you have told me not to repeat that Your Honor has alleged that I keep repeating? And I grant you the one example that I concede in the Rule 60 motion.

THE COURT: Why did you even file that, what you call to be a Rule 60 motion?

MR. KAIMOWITZ: Because Your Honor granted me that, in part.

THE COURT: I understand. I say, why would you even file it? It had nothing to do with anything in the lawsuit as to whether or not there was a ruling adverse to you. I copied the--I just copied the style of the motion made. You know, no one has ever held it against you or said that you didn't do something in the way of discovery. Why,

20--after the case had been dismissed do you file that? Why did you do that?

MR. KAIMOWITZ: Because, Your Honor added a key word in that order which is, that for the first time you found my paper to be frivolous. And that order--that word obviously comes loaded with Rule 11 specific sanctions, and it was that that I was protecting myself against. Now, I may say paranoic at this point, Your Honor, but all I can do in light of Kimel,

20 (cont.)--I cannot understand why my paranoia seems so unreasonable. Your Honor well knows that on May 17th you entered what I regard as an outstanding order. I don't know what else to say. I'm laughing because it is so concise, to the point, and the like. Your Honor at that point doesn't make it known to me. Your Honor has no obligation to do so. Opposing counsel does have an obligation to do so. She not only does not do so, but turns around, files a motion to dismiss that. Even with knowledge of Kimel, I say to myself, this can't be. This is not law. So I respond to that. At that point, instead of Your Honor ruling on those motions, I'm being dismissed of a second amended complaint that I had crafted so carefully, specifically because of Your Honor's admonitions with regard to the first amended complaint.

21. And, as I said, I mean I would ask Your Honor specifically with regard to the second amended complaint--that is why I went to an expert. And so Your Honor again says in generalities: Mr. Kaimowitz, why do you keep repeating that? And I keep asking: What is the "that" that I keep repeating?

THE COURT: Let me ask you another question, Mr. Kaimowitz. The dismissal you said was improper. You had an opportunity to refile. Why do you keep going on in this case, all these appeals, when all you had to simply do was sit down--anyone that can read can find the essential elements to state a cause of action under ADEA. That's not hard to find, is it? It says: Here's what you have to allege. You have to prove it later. Here's what you allege to state a cause of action. It doesn't take but about three pages of a complaint. Why did you not do that?....

...

22. MR. KAIMOWITZ:....(T)he reason that I don't start over is that I'm concerned about the number of days and whether the exhaustion requirement was proper, and if **23**. there's a voluntary dismissal and I start the pleading again, do I have to go back to the EEOC....

24. THE COURT:....Just file another complaint. Why don't you do that? Why didn't you do that?
25. MR. KAIMOWITZ: As I said, with regard to the second amended complaint, I thought I had.
THE COURT: You could file the second amended complaint over again if you think it's right in a new one. I mean, I'm not telling you to do that, but if you think that is factual--without all of this extraneous mess that you put in complaints....
MR. KAIMOWITZ: Your Honor, as I said, that if I come back to you in this case to try to reach trial, start a new case with a new number, there are all kinds of procedural pitfalls--that Your Honor may agree with me, that don't count. But the state then takes it up on appeal, and I lose, and I say: Wait a minute. I had that right the first time, but I'm out of court. There is clearly a difference, Your Honor, when the case number changes....
THE COURT: I understand that.
MR. KAIMOWITZ: So, therefore, I'm really reluctant. And what I try to do, frankly, Your Honor, is separate out state claims, and I have filed under the state law in state court and proceed in that instance.
THE COURT: Then why come back to--why did you come back here after you had filed your appeal, and file all of this other stuff?
MR. KAIMOWITZ: I though it was to preserve the record for...
THE COURT: For what What were you preserving? The case has been dismissed. What can you preserve?
MR. KAIMOWITZ: May I remind Your Honor, the case was dismissed, but it was dismissed with an order to show cause why I shouldn't be found in contempt.

THE COURT: And I've dismissed that later, didn't I? But you didn't stop there....

27 THE COURT: (Y)ou know, it seems to me that what your problem is, that you're afraid if the dismissal goes, you might run into some statute of limitations.
MR. KAIMOWITZ: Different courts--
THE COURT: Hold on a minute. Why didn't you pursue that where you were, up in the 11th Circuit, instead of coming back here to this court and filing what you just recently filed, after I had already said I understand, maybe you know, give the benefit of the doubt, not going to hold him in **28** contempt, not going to impose sanctions, go on with your appeal. That didn't satisfy you, Mr. Kaimowitz, you come back again.
MR. KAIMOWITZ: I would ask Your Honor to give me the opportunity to withdraw that and to apologize.
THE COURT: You can't unring the bell, Mr. Kaimowitz. Why did you do it? I've got to understand you to decide whether to impose sanctions or hold you in contempt.
MR. KAIMOWITZ: I've said, Your Honor, repeatedly that the trigger word was "frivolous". It has Rule 11 connotations, where I'm used to –in the Orlando Division--fighting a Rule 11 motion in every case that I have filed for 10 years in the Orlando Division.
THE COURT: Okay. Let's assume that's true. Give you the benefit of the doubt. Why do you add into it the recusal that I told you never to put in. Why do you do that?
MR. KAIMOWITZ: That, Your Honor, for that I'm saying to Your Honor on that one point, I concede that I have no valid explanation.
THE COURT: Well, you must. You've spent--most of the pleading was about recusal.
MR. KAIMOWITZ: I think if you look at that carefully, that is not the case. That it was--it was just a paragraph at the bottom, as a matter of fact, where I asked **29** Your Honor if you would consider under these circumstances, so that if it came back, it did not come back to Your Honor. I understand, Your Honor. It was a mistake.

29 (cont.)--THE COURT: Well, you may understand, but you haven't made me understand why you did it. You know--
MR. KAIMOWITZ: I'm trying to say in both the frivolous count, and the fact that, as I say, that it was my belief that is now confirmed by Kimel, that, in fact, something else was going on in this case that does not make sense.
THE COURT: What was going on in this case that doesn't make sense to you, Mr. Kaimowitz?....
MR. KAIMOWITZ: Kimel was not disclosed to me. If Kimel was disclosed between June 17th and July 29th, I assure Your Honor that there would have been no dismissal of the second amended complaint, that I would have known how to file an appropriate paper and would have moved immediately for injunctive relief on the basis of Kimel. That is clearly why I'm upset about Kimel not having been disclosed, not the issue of sanctions. But if on--if on June 17th, opposing counsel had said: "We're making the Kimel argument, but Kimel is against us, "I would immediately have come back to Your Honor with a motion for an injunction and summary judgment, which I filed separately, and said: Your **30** Honor, that at this point, I want a matter of a direction that in fact Kimel does apply in this case, and therefore the state is to be directed forthwith to answer and not to file a motion to dismiss, which would be--simply to be contentious and was based--was groundless and the state knew it was groundless because it hid the fact that it didn't cite Kimel. But the critical time is between June 17th when that motion to dismiss was filed and July 29th when Your Honor dismissed the case on other grounds.
THE COURT: Mr. Kaimowitz, what are we going to do with you? You tell me what you think we ought to do with you.
MR. KAIMOWITZ: My point at this point is send me to the Bar.

THE COURT: I'm not sending you to the Bar. I take care of my own stuff. What is it we ought to do? Your problems with

the Bar are independent....
31--THE COURT: You're not the one to talk about things being over. Theoretically this case was over months ago when I dismissed it. But you haven't let it lie.
MR. KAIMOWITZ: But, Your Honor, as I point out to you, that the first time Your Honor similarly dismissed it, I went up on appeal, but I managed to save the case here and avoid that appeal that time in 1995 which is why this case continued to go. I hoped to do that again when the second amended
32--complaint was dismissed. I don't want it up in the 11th Circuit. I can assure you, Your Honor. All I'm saying to you is, yes, I want it to stop here at this point. But it should have stopped if any time on November 26th. If that had been a contempt hearing, okay, but we go through the November 26th hearing, it's over. And suddenly an order comes down again repeating the same allegations as before, which is what made me find Kimel, repeating the same thing. And suddenly I'm facing contempt, which I didn't face on November 26th.
THE COURT: Anything else, Mr. Kaimowitz?
MR. KAIMOWITZ: No, Your Honor.
THE COURT: Anything at all?
MR. KAIMOWITZ: No, Your Honor.
THE COURT: I'll take the matter under advisement.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

FILED
U.S. COURT OF APPEALS
JAN 29 1997
MIGUEL J. CORTEZ,
CLERK

Nos. 96-2478 and 96-3116

GABE KAIMOWITZ, an attorney pro se,
Plaintiff-Appellant,

versus

STATE OF FLORIDA, by and through Governor Lawton Chiles and Attorney General Robert A. Butterworth and their successors, employees, agents and assignees; STATE OF FLORIDA BOARD OF REGENTS; DEPARTMENT OF JUVENILE JUSTICE; FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS; FLORIDA DEPARTMENT OF CORRECTIONS, et al.
Defendants-Appellees

On Appeal from the United States District Court for the Northern District of Florida

ORDER:

Appellant's motion to consolidate these appeals with 96-2788[1] is DENIED.

Phyllis Kravitch
SENIOR UNITED STATES CIRCUIT JUDGE

1--PETITIONER'S NOTE: This was Florida Board of Regents v. Kimel, et al., on appeal.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

Kaimowitz

vs CASE NO. 94-10061 MMP

State of Florida, et al.

REFERRAL AND ORDER

Referred to Judge Maurice Paul on April 24, 1997

Motion/Pleadings: Motion for modification of an order filed 1/17/97

Filed by pla. on 3/18/97 Doc. #177

RESPONSES:

_____ on _____ Doc. #_____

_____ on _____ Doc. #_____

ROBERT A. MOSSING, CLERK

1_____ BY _____

LC (1 OR 2) Deputy Clerk: Kathryn Revell

ORDER OF COURT

It is ORDERED this ***24th*** day of *April*, 1997,
the requested relief is *DENIED*

Maurice M. Paul,
MAURICE M. PAUL
CHIEF UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET *4/25/97* By *BP*
Rules 58 & 79(a) FRCP or 32(b)(1) & 55 FRCP
Copies mailed to: *Quillen, Jennings, Kaimowitz, Oxman,*

OFFICE OF CLERK
U.S. DISTRICT COURT NORTH. DIST. FLA
GAINESVILLE, FLA

FILED *180* 1997 NOV 25 PM 12:18

UNITED STATES DISTRICT COURT

Pensacola Division
Room 129,
100 N. Palafox Street
PENSACOLA, FL 32501-4863
(904)-435-8440 Fax 433-5972

United States Symbol

Gainesville Division
Room 243
401 SE First Avenue
Gainesville, FL 32601
(352)-380-2400 Fax 380-2424

Northern District of Florida
OFFICE OF THE CLERK
Robert A. Mossing, Clerk
110 E. Park Avenue, Room 122
Tallahassee, FL 32301-7795
(904)-942-8826 Fax 942-8830

MEMORANDUM

TO: Pro Se Litigants

RE: GABE KAIMOWITZ v. FL SUPREME COURT, et al.

DATE: May 13, 1997

1. Your civil rights complaint/habeas corpus petition has been received and filed in the TALLAHASSEE Division and assigned Case No. 4:97CV185-RH. Refer to this number on all future pleadings and correspondence and include the judge's initials following the number.

2. The U.S. Magistrate Judge assigned to your case will perform all initial screening and processing, in accordance with local rules of this district (N. D. Fla. Loc. R. 72.2 and 72.3).

....

5.....Your original signature is required on the document to be filed. Failure to comply with these instructions will cause unnecessary administrative delays in the handling of your case and may result in the return of your documents.....

The mission of the Office of the Clerk is to provide the highest quality support to the judges and chambers staff of the Northern District of Florida in their role of administering justice to the citizens of this district.

7. All documents should be filed with the Clerk's office. Judges and Magistrate Judges cannot discuss matters pending before them. Therefore, you should not correspond with or contact the Judges, Magistrate Judges or anyone in their offices. All inquiries should be in writing and addressed to the Clerk's Office. Please be advised that the Clerk and his deputies are prohibited from giving you any legal advice.

SEE ATTACHED FORM

EXAMPLE OF PLEADINGS FORMAT

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

GABE KAIMOWITZ,
Plaintiff,

vs. 4:97cv185-RH

SUPREME COURT OF
FLORIDA, et al.,
Defendants.

REPORT AND RECOMMENDATION

This cause is before the court upon referral from the clerk. Gabe Kaimowitz, proceeding pro se, has filed a civil rights complaint under 42 U.S.C. §§ 1983 and 1985, doc. 1, and has paid the filing fee. Plaintiff Kaimowitz has also filed a motion for preliminary relief, doc. 3, with supporting memorandum, affidavit, and materials, docs. 4, 5, and 6, and a motion for temporary restraining order with supporting memorandum. Docs. 8 and 9. The complaint should be summarily dismissed for violation of a court order.

On January 17, 1997, in Kaimowitz v. State of Florida et al., GCA 94-10061, following Plaintiff's repeated disregard for the court's numerous admonitions, Chief Judge Maurice M. Paul issued an order imposing sanctions on Plaintiff. The order requires Mr. Kaimowitz to obtain the counter-signature of an attorney who is a member of the bar of this Court on any future filings. Doc. 173 in that file, entered on January 17, 1997.

ENTERED ON DOCKET *11/26/96* By *AS* OFFICE OF CLERK
Rules 58 & 79(a) FRCP or 32(b)(1) & 55 FRCP U.S. DISTRICT
Copies mailed to: *Kaimowitz Quillen,* COURT NORTH. DIST.FLA
Jennings,Oxman (G'ville Clk ofc) TALLAHASSEE, FLA
FILED *10* 97 MAY 22 AM 10:22

Chief Judge Paul retained jurisdiction to enforce that order, Id..

The complaint in this case does not have the signature of an attorney other than Mr. Kaimowitz. Mr. Kaimowitz has violated Chief Judge Paul's order.

Accordingly, it is RECOMMENDED that:

1. Plaintiff's complaint, doc. 1, be DISMISSED without prejudice for failure to comply with a court order, and Plaintiff's motions for preliminary relief, doc. 3, and for a temporary restraining order, doc. 8, be DENIED as moot.

2. The court direct the clerk to file a copy of this report and recommendation and the order adopting it in GCA 94-10061, serve on the parties in that case, and refer that file to Chief Judge Paul.

IN CHAMBERS at Tallahassee, Florida, this 22nd day of May, 1997.

William C. Sherrill, Jr.
WILLIAM C. SHERRILL, JR.
UNITED STATES MAGISTRATE JUDGE

NOTICE TO PARTIES

Within 15 days after being served with a copy of this report and recommendation, a party may serve and file specific, written objections to the proposed findings and recommendations. A party may respond to another party's objections within 10 days after being served with a copy thereof. Failure to file specific objections limits the scope of review of proposed factual findings and recommendations.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

GABE KAIMOWITZ,
an attorney pro se,
Plaintiff,

vs. **Civ. N o. 4-97-CV-185-RH**

SUPREME COURT OF FLORIDA and its **FLORIDA BAR** agncy, including but not limited to its Orlando staff, acting in concert with officials in the Metro Orlando area,
Defendants. Hon. Robert L. Hinkle

NOTICE OF FILING SIGNATURE OF A MEMBER IN GOOD STANDING OF THE COURT RE: SUBSTANTIAL COMPLIANCE WITH AN ORDER OF JUDGE MAURICE M. PAUL IN KAIMOWITZ V. FLORIDA, et al., 94-CV-10061-MMP (N.D. FL 1994)

To the Attorney General for Florida and counsel for the Florida Bar: Attached herewith is a document with the signature of a member in good standing of this Court, so that Plaintiff Attorney can be in substantial compliance with an Order of Judge Maurice M. Paul in Kaimowitz v. Florida, et al., #94-CV-10061-MMP (N.D. Fla. 1994).

CERTIFICATE OF SERVICE

A copy of the foregoing with attachments has been sent by first class mail on May 27, 1997, to Robert Butterworth, Attorney General, State of Florida, The Capitol, PL-01, Tallahassee, FL 32399; Barry Scott Richard, Florida Bar attorney, P.O. 1838, 101 E. College Ave., Tallahassee, FL 32302-1838; Joan Fowler, Staff Counsel, Orlando Office of the Florida Bar, 880 N. Orange Ave., #200, Orlando, FL 32801; Prof. Joe Little, School of Law, University of Florida, Gainesville, FL 32611, Gary Sherman, esq., P.O. 157, Fairview Law Office, Port Wing, WI 54865.

Gabe Kaimowitz
Gabe Kaimowitz (Fla Bar 0633836)
P.O. 140119 Gainesville, FL 32614
(352) 375-2670 GabeHK@aol.com

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

GABE KAIMOWITZ,
an attorney pro se,
Plaintiff,

vs. **Civ. N o. 4-97-CV-185-RH**

SUPREME COURT OF FLORIDA Hon. Robert L. Hinkle
and its **FLORIDA BAR** agency,
including but not limited to its
Orlando staff, acting in concert with
officials in the Metro Orlando area,
Defendants.

RE: SUBSTANTIAL COMPLIANCE WITH AN ORDER OF JUDGE MAURICE M. PAUL

1. The undersigned is a member in good standing of the U.S. District Court for the Northern District of Florida.

2. I have read an order of Jan. 17, 1997, issued by Chief Judge Maurice M. Paul, of that federal district in Kaimowitz v. State of Florida, #94-CV-10061-MMP (N.D. Fla. 1997). That order requires the Plaintiff attorney to obtain a counter-signature for filings in this case or any other on behalf of either himself or others of "an attorney who is a member of the bar of this Court."

3. I further understand that the "attorney counter-signing such filings need not be counsel of record in the case." I am not a counsel of record in this case.

4. The Plaintiff attorney in this action has met with me in person in the first full week of May, and he represents to me that he has provided me with each paper he has provided for filing up to and including May 27, 1997, in this matter before and since the verified complaint was accepted for filing on or about May 13, 1997.

5. In addition to the pleading, I have seen and reviewed all papers sent by Plaintiff attorney for filing to secure temporary relief.

6. On the basis of the foregoing, I am signing this document for filing in this legal action. The document is described by Plaintiff attorney as providing "substantial compliance with that order of Judge Maurice M. Paul."

7. I have initialed each change, if any, I have made to this document.

Joseph Little *5/27/97*

Joseph Little, Fla Bar 196749

3731 NW 13th Place[1]

Gainesville, PL

32605

Phone# *352-392-2211*

1--Petitioner's Note: Mr. Little crossed out under his typed name "Professor of Law, School of Law, University of Florida, Gainesville, FL 32611

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

GABE KAIMOWITZ,
Plaintiff,

vs. 4:97cv185-RH

SUPREME COURT OF
FLORIDA, et al.,
Defendants.

ORDER OF RECUSAL

Having represented the Florida Board of Bar Examiners immediately prior to my appointment as a United States District Judge in 1996, and issues involved in my representation of the Florida Board of Bar Examiners potentially being similar to issues that may be raised by the Florida Supreme Court and Florida Bar in the case at bar, I hereby recuse myself from consideration of this matter.

SO ORDERED this *11th* day of June, 1997.

Robert L. Hinkle
Robert L. Hinkle,
United States District Judge

ENTERED ON DOCKET *6/11/97* By *AS* OFFICE OF CLERK
Rules 58 & 79(a) FRCP or 32(b)(1) & 55 FRCP U.S. DISTRICT
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Chief Judge Paul TALLAHASSEE, FLA
FILED *16* 97 JUNE 11 AM 11:47

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORID
GAINESVILLE DIVISION

GABE KAIMOWITZ
Plaintiff,

vs. CASE NO. GCA 94-10061-MMP

STATE OF FLORIDA, et al.,
Defendants.

ORDER

This cause comes before the Court *sua sponte*. On January 17, 1997, the Court entered an order imposing the following sanctions upon Plaintiff:

> In any future filings Plaintiff makes in the United States District Court for the Northern District of Florida (on behalf of either himself or others), he shall first obtain the counter-signature of an attorney who is a member of the bar of this Court. The attorney counter-signing such filings need not be counsel of record in the case. This sanction shall remain in full force and effect until further order of this Court.

Doc. 173 at 3. In the same order, the Court specifically retained jurisdiction "to the extent necessary to enforce or otherwise modify" this sanction. Id. On May 22, 1997, Magistrate Sherrill entered a report and recommendation, in which he indicated that Plaintiff had filed a separate action

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Jennings, Kaimowitz, GAINESVILLE, FLA
Oxman, GE, BKP 182 97 JUN 13 PM 2:50 FILED

without first obtaining the counter-signature of an attorney who is a member of the bar of this Court. See Doc. 181 (report and recommendation filed as document 10 in case number 4:97-cv-185-RH).*

Based upon the foregoing, it is hereby

ORDERED AND ADJUDGED:

The Plaintiff is ORDERED to show cause, in writing, if any he may have, why he should not be held in contempt for his violation of the Court's January 17, 1997 order [Doc. 173]. Plaintiff's written response shall be filed by Wednesday, June 18, 1997; hearing on the SHOW CAUSE ORDER is set for Thursday, June 19, 1997, at 3:30 p.m. at the United States Courthouse, Gainesville, Florida. Counsel for Defendants need not attend show cause hearing.

DONE AND ORDERED this *13th* day of *June*, 1997.

Maurice M. Paul

MAURICE M. PAUL, CHIEF JUDGE

---

* Magistrate Sherrill directed that a copy of the report and recommendation be filed in this case and referred to the Court.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORID
GAINESVILLE DIVISION

GABE KAIMOWITZ
Plaintiff,

vs. CASE NO. GCA 94-10061-MMP

STATE OF FLORIDA, et al.,
Defendants

ORDER

A show cause hearing was scheduled for June 19, 1997, at 3:30 p.m., in the United States Courthouse in Gainesville. At the scheduled time, Mr. Gabe Kaimowitz appeared as directed in this Court's Order to Show Cause dated June 13, 1997 (doc. 182).

At the start of the hearing, Mr. Kaimowitz requested that he be given additional time to prepare his presentation. The Court therefore stopped the proceedings, and informed Mr. Kaimowitz that he would be given three additional days in which to prepare.

It is hereby ORDERED AND ADJUDGED:

(1) The hearing on this Court's Order to Show Cause (doc. 182) is CONTINUED.

(2) That show cause hearing shall be conducted on Wednesday, June 25, 1997 at 8:30 a.m. in the United States Courthouse in Gainesville, Florida.

DO NE AND ORDERED this *19th* day of *June* 1997.

Maurice M. Paul

MAURICE H. PAUL, CHIEF DISTRICT JUDGE

ENTERED ON *DOCKET 6/20/97* By *KR*
Rules 58 & 79(a) FRCP or 32(b)(1) & 55 FRCP
Copies mailed to: *Quillen, Jennings, Kaimowitz, Oxman, BKP, GE 186*

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GAINESVILLE, FLA
97 JUN 19 PM 4:50 FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORID
TALLHASSEE (sic) DIVISION

GABE KAIMOWITZ
Plaintiff,

vs.

STATE OF FLORIDA, et al.,
Defendants.

Docket No. GCA 94-10061

Gainesville, Florida
June 25, 1997
9:40 a.m.

TRANSCRIPT OF MOTION TO SHOW CAUSE
(EXCERPTS AS NOTED)
HELD BEFORE THE HONORABLE CHIEF UNITED STATES DISTRICT JUDGE MAURICE M. PAUL

APPEARANCES:

For the Plaintiff: GABE KAIMOWITZ, ESQUIRE
Post Office Box 140119
Gainesville, Florida 32614

Court Reporter: Mark N. Stuart, RPR-CPE
Official Court Reporter
Post Office Box 1328
Gainesville, Florida 32602
352-380-0399

2--THE COURT: Be seated, folks. Good morning. Please be seated. Come on up, Mr. Kaimowitz.
MR. KAIMOWITZ: If it please the Court. My name is Gabe Kaimowitz. I'm an attorney proceeding in Kaimowitz vs. State of Florida, pro se. We're here on an order to show cause why I should not be held in contempt for an alleged violation of Your Honor's order of January 17, 1997. I would point out that it is 8:40. But, rather--to be very careful, and I understand the nature and seriousness of this proceeding, I want to be clear that I was here at 8:30 at the appropriate time, and whatever delay was not--is not attributable to me. First, I will say that I do not concede any violation of the Court's order of January 17th, 1997. It is my position that there was compliance, and the argument--in addition to the papers that I have submitted--first, on January 19th--I'm sorry, on June 19th when this matter was originally scheduled, and then I would hope the Court has received papers that I sent out by First Class Mail as well as to the 11th Circuit on Saturday, June 21st. This matter relates to a case that I filed in the Tallahassee Division, Gabe Kaimowitz v. Supreme Court of Florida, et al., 97-CV-185-RH, before the Honorable Robert L. Hinkle, at least until he recused himself in that matter or about June 11th, 1997....
13--I had to go in to stop the --or to inhibit the proceedings against me, that I will show in time are unwarranted in the state bar disciplinary proceedings which began at or about April of 1996 at the instigation of the Eubanks firm, and in which I have so far successfully defeated three out of four charges. The fourth charge is still pending, and that will be dealt with elsewhere. But it was only for--to sum up--it was only for preliminary relief. I did approach, prior to filing, and supplied Mr. Little with the papers. Mr. Little did sign on, provided substantial compliance--
THE COURT: When did he sign on?
MR. KAIMOWITZ: May 27th.
THE COURT: When did you file your papers?

13 (cont.) THE COURT: When did you file your papers?
MR. KAIMOWITZ: I filed it--it is complex, Your Honor.
THE COURT: It was prior to him signing on. They had
14 already been filed before.
MR. KAIMOWITZ: They had already been filed. I'm saying the reason for that is because of the need for preliminary relief. I'm saying to Your Honor, that it's on that I'm making the basis of my argument that it could not wait, that I would have forfeited a right to protect myself from what was considered improper bar proceedings. And the irony , as I pointed out to Your Honor previously in a motion that Your Honor rejected summarily, that -- to ask me to have a Florida Bar member sign off on a complaint in which I'm trying to free myself from the Florida Bar, it would seem to me to be anomalous. But I don't expect that to be resolved here. So I would ask Your Honor particularly to--if there is to be further proceedings on the order to show cause, that another judge hear this matter independently to adjudicate this.
THE COURT: Mr. Kaimowitz, I've told you in person, I've told you in orders, that the courts are open for orderly business, orderly transaction of business. A person who is a lawyer should know the proper way in which to present a claim. You state the facts, the legal facts, your statement of claim, whatever it's called, whether it's in a federal proceeding or a state proceeding, they call them different things.
15--And what I told you when this thing first started was that all of these extraneous matter you keep throwing in your pleadings is not proper. You demonstrated that you are unable to comply with those directions, because you continue, to this day to file pleadings, papers, memorandum, whatever you may call them, that go all over the field, are not relevant one whit to the issues that--the legal issues. And why you persist to do that I don't know. That is why--Don't give me this. You've had 30--20 minutes to speak, I'm going to take five. Filing--calling people, you know, names in pleadings, referring to 15

15 (cont.) judges other than myself in a manner or ways that are uncalled for. If you have a legal position, you can state your position. You don't file copies of newspaper--Don't give me that. I'm looking at a newspaper you filed here, because it's me. It has reference to me in it. What relevance that is, I do not know. And its that sort of thing that has got you in trouble. You are unwilling to abide by the simple rules of procedure, that is, a short, concise statement of the claim for which you rely. That gets you in trouble. And that's why I finally told you you can't file anything in these courts any more until someone has looked at them that has a -- comes from a position other than you. You're so close to whatever it is you're doing, you know, you lose your perspective. **16** No, I'm not through. When I'm through I'll tell you, and you can talk. Remember you've had 25 minutes. I want to talk a minute to you. Filing this matter without anyone's signature was a violation. You knew it was a violation. Mr. Little signed these things. I have read his--whatever you call it, his affirmation, it wasn't an oath, and it wasn't required. But just affirming that he had read these papers, as of the date--sometime in May which was way beyond the time you filed these papers.

MR. KAIMOWITZ: It was filed in May, Your Honor.

THE COURT: May the 25th he signed--

MR. KAIMOWITZ. I'm saying the complaint was filed in May

THE COURT: I understand that. And you have not given me one valid reason why you couldn't comply with that order, not one valid reason. You say you lost--you would lose something. I have no idea what it is you--you tell me right now, what was so important that you would lose a right, if you didn't file it immediately?

MR. KAIMOWITZ: I stand to be disbarred at this point for a case that dates from 1990 on what I regard as an ongoing controversy related to my claim that the City of Orlando filed false claims to the federal government.

THE COURT: When was the hearing scheduled for your
17--disbarment?
MR. KAIMOWITZ: Excuse me?
THE COURT: What was the rush to file--
MR. KAIMOWITZ: That--I had to have had an answer in to the complaint within 20 days from--I believe it was April 22nd. And that--with notification that, were I not to answer it, as so stated in the Florida Bar Rules, that I could forfeit argument later. And there was no provision therein for timely filing....
18--THE COURT:...Could you point out to me in your pleadings filed for preliminary relief where it said that you face imminent disbarment if you don't file this?
MR. KAIMOWITZ: I don't think I stated that.
THE COURT: That's what you just told me orally, though, was the reason you filed it.
MR. KAIMOWITZ: Your Honor, I cannot predict what the other side will do. I was trying to restrain the Florida Bar from action against me. As I indicated at that point, I was facing one hearing, I was facing a new complaint by then....
19--As you can tell, Your Honor, I've submitted extensive documentation in that other case. I take it Your Honor has those papers before you at this point, though I'm not sure in that sense I understand the relevance to this proceeding and how those papers get in this record without me knowing which papers are here. But I'm concerned. That--I'm trying in good faith to comply.
THE COURT: I don't understand what you're saying. I'm reading from your motion filed in the United State District Court, Tallahassee Division, Kaimowitz vs. Supreme Court of Florida, Florida Bar, filed on May 5th. That is what I am reading from. What do you mean how did they get in this proceeding?
MR. KAIMOWITZ: Because this proceeding is Kaimowitz v. State of Florida in the Gainesville Division, and that is the case we're here on today.

20 (cont.) MR. KAIMOWITZ: The other case in the Tallahassee Division, as far as I know, is not before this court in any proper manner.
THE COURT: Now, is Tallahassee part of the Northern District of Florida?
MR. KAIMOWITZ: It certainly is.
THE COURT: What did the order say about filing any pleadings?
MR. KAIMOWITZ: I could not do that. But there is still due process in which I'm entitled to answer in the proper forum in the Northern District....
21 THE COURT: Mr. Kaimowitz. Mr. Kaimowitz. I was referring to your argument as to why you filed this thing, this complaint in Tallahassee without the required signature of a lawyer. And the reasons you were telling me here in open court are nowhere stated in that petition or supported by that petition, which I have just read.
MR. KAIMOWITZ: Your Honor, that's exactly what I have a right in that case, to show that they are supported. Not in this case. I have a right in that case before an impartial judge to show that, Your Honor, I have fear of being disbarred, these are the reasons. This is the complaint that I drafted hastily, because I was in a rush to get to this Court. But that is not before this Court, which is Kaimowitz v. State of Florida.
THE COURT: Mr. Kaimowitz, you're very wrong. It's before this court only because you violated this Court's order of filing that pleading without getting the required signature of a member of the Northern District of Florida Bar whose signature would tell me or any other judge: I read it, and it appears to be, you know, in a --without weighing the merits of what it says--it appears to be a proper pleading. Not some **22** of these pleadings that you've filed before that ramble all over the place and make all of these outlandish statements. That's why it is here.

22 (cont.) MR. KAIMOWITZ:....(A)re you saying that any paper that I should file without--any paper that I should file anywhere in the Northern District that does not have that countersignature is subject to review by this Court in this proceeding?

THE COURT: I'm not saying that. I'm saying that this case that you filed did not have a signature, and that is subject to my order.

MR. KAIMOWITZ: I agree. But I'm saying, Your Honor, even that has a due process way of getting here. That is what I'm saying to you, that I'm concerned about that(.) I have a right to protect myself and my interests, and that's why I'm at the 11th Circuit. Now Your Honor may say: Mr. Kaimowitz, you should simply file a simple statement of what you are trying to say. And Your Honor, as I understand it, does at least find my pleading to have been not scandalous or scurrilous or frivolous in the other matter of Kaimowitz v. Supreme Court et al..

THE COURT: I'm not saying that. I'm just saying I read that particular petition, and that is where you should have--that is why I required a lawyer to say it was not **23** frivolous, not scandalous, not scurrilous....

MR. KAIMOWITZ: It was formally filed on May 13th. That is when it was docketed. I don't know when it was docketed, but I will concede to Your Honor--

THE COURT: Just hold on. May the 12th... What was the date that Mr. Little--

24 MR. KAIMOWITZ: May 27th.

THE COURT: Is the 17th before or after the 12th?

MR. KAIMOWITZ: It is after. And I'm saying--if this is the Marines, Your Honor, and there is no excuse, sir, I will stop my argument. This is a court of law. And in a court of law, I'm entitled to offer excuse. And I'm saying to Your Honor why, and I've explained why that two-week delay occurred. I'm saying that if you want to fault Mr. Little, do that, because he expects that. And that's what I'm having trouble with today.

24 (cont.) THE COURT: You expect...Mr. Little expects what?
MR. KAIMOWITZ: Mr. Little reviewed those pleadings--
THE COURT: Mr. Little expects what?
MR. KAIMOWITZ: Expects possible retribution for his having signed that document on a paper, that if you should, for example, find it frivolous, he would have signed a document that a court had found frivolous. And that's what any attorney who I have to consult is liable for. Now Mr. Little went on--
THE COURT: Well, now we're going to stop this proceeding again, and this is going to be transcribed. I'm going to send a copy to Mr. Little and ask him to come to this court. You're telling me things--Mr. Kaimowitz, you don't 25 know when to stop something, do you? You just do not know when to stop, sir. If you file a pleading and it's in proper form, that's all that's required, and that's all you ought to do. I want the statement transcribed about Mr. Little's concern, and I'm going to reset it and ask Mr. Little to join us at this next meeting that we will have. I will continue this. You and I are not through here, because I'm not going to resolve it until we hear from Mr. Little
MR. KAIMOWITZ: Can I--
THE COURT: You can't do anything, because this hearing is now concluded, subject to being reset as soon as this is transcribed and a copy sent to Mr. Little. And we will ask him to join us. I will advise you of the next hearing date. Thank you....

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

FILED
U.S. COURT OF APPEALS
AUG 51997
MIGUEL J. CORTEZ.
CLERK

Nos. 96-2478 and 96-3116

GABE KAIMOWITZ, an attorney pro se,

Plaintiff-Appellant,

versus

STATE OF FLORIDA, by and through Governor Lawton Chiles and Attorney General Robert A. Butterworth and their successors, employees, agents and assignees; STATE OF FLORIDA BOARD OF REGENTS; DEPARTMENT OF JUVENILE JUSTICE; FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS; FLORIDA DEPARTMENT OF CORRECTIONS, et al.

Defendants-Appellees.

On Appeal from the United States District Court for the
Northern District of Florida

ORDER:

Appellant's motion for an extension of time to file his brief in 96-3116 is DENIED. Appellant is ORDERED to file his brief in that case within 14 days of the date of this order. The clerk is directed to dismiss 96-3116 if Appellant's brief in that case is not actually received in the clerk's office within these 14 days. Appellant's "amended notice of appeal," properly construed as a motion to supplement the record on appeal, is DENIED..

Susan H. Black
UNITED STATES CIRCUIT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

GABE KAIMOWITZ,
Plaintiff,

vs. 4:97cv185-RH

SUPREME COURT OF
FLORIDA, et al.,
Defendants.

ORDER

Upon consideration of the recusal of Judge Hinkle (doc. 16), the Clerk is directed to assign this case to me for subsequent handling and disposition.

DONE AND ORDERED this *8th* day of August, 1997.

Roger Vinson
ROGER VINSON
Chief Judge

ENTERED ON DOCKET *8-8-97* By *BM* OFFICE OF CLERK
Rules 58 & 79(a) FRCP or 32(b)(1) & 55 FRCP U.S. DISTRICT
Copies mailed to: *Kaimowitz,* CO URT NORTH. DIST.FLA
Judge Hinkle PENSACOLA, , FLA
FILED-initials *19* 97 AUG-8 PM 3:42

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

Miguel J. Cortez
Clerk

56 Forsythe Street, N.W.
Atlanta, Georgia 30303

In Replying Give
Number of Case
And Names of Parties

October 10, 1997

Mr. Gabe Kaimowitz,
P.O. Box 140119
Gainesville, FL 32614

RE: 97-2458 - In Re: Gabe Kaimowitz[1]
97-2211 - In Re: Gabe Kaimowitz
97-3110 - In Re: Gabe Kaimowitz

Dear Mr. Kaimowitz:

Enclosed are orders in 97-2458 and 97-2211 which have been entered in our Court. Both of these cases are closed and no further action will be taken in these appeals.

You had also submitted a motion to consolidate appeal numbers 97-2458, 97-2211 and 97-3110. While 97-3110 is still pending before our court, the motion to consolidate in appeal 97-3110 is now MOOT in light of the enclosed orders.

Sincerely,
Miguel J. Cortez
MIGUEL J. CORTEZ, Clerk
By: *Vicki Berrong*
Vicki Berrong, Deputy Clerk
(404) 331-3833

MJC/vb
Enc.
C: Hon. Anne Conway, Judge US District Court/Orlando
Hon. Maurice M. Paul, Chief Judge, US District Ct/Gainesville
Louis Hubener, Florida Dept. of Legal Affairs

1--PETITIONER'S NOTE: #97-2458 is NOT relevant to this petition.

IN THE UNITED STATES COURT OF APPEALS
FOR THE 11TH CIRCUIT

NO. 97-2211

FILED
U.S. COURT OF
APPEALS
OCT 10 1997
MIGUEL J. CORTEZ
CLERK

IN RE:

GABE KAIMOWITZ,

Petitioner

On Petition for Writ of Mandamus to the
United States District Court for the
Northern District of Florida

BEFORE: ANDERSON and CARNES, Circuit Judges.

BY THE COURT:

Petitioner's application for a writ of mandamus is DENIED because the petition for writ of mandamus is frivolous. Petitioner's motion for recusal of Florida Bar Member Judges[1] is DENIED.

1--PETITIONER'S NOTE: Judge Susan H. Black is one of the Florida Bar Member Judges. As noted supra Judge Black on Aug. 5, 1997 denied a motion to supplement the record on appeal, to include the lower court order of Jan. 17, 1997 requiring a counter-signature; that was the order sought to be set aside by Petitioner. See next order of Oct. 20, 1997.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

FILED
U.S. COURT OF APPEALS
OCT 20 1997
MIGUEL J. CORTEZ,
CLERK

Nos. 96-2478 and 96-3116

GABE KAIMOWITZ, an attorney pro se,

Plaintiff-Appellant,

versus

STATE OF FLORIDA, by and through Governor Lawton Chiles and Attorney General Robert A. Butterworth and their successors, employees, agents and assignees; STATE OF FLORIDA BOARD OF REGENTS; DEPARTMENT OF JUVENILE JUSTICE; FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS; FLORIDA DEPARTMENT OF CORRECTIONS, et al.

Defendants-Appellees.

On Appeal from the United States District Court for the
Northern District of Florida
No. 97-2211

IN RE:

GABE KAIMOWITZ,

Petitioner

On Petition for Writ of Mandamus to the
United States District Court for the
Northern District of Florida

ORDER:

Appellant's motion to consolidate 97-2211 with 96-2478 is and 96-3116 is denied.

s. R. Lanier Anderson, III
UNITED STATES CIRCUIT JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

FILED
U.S. COURT OF APPEALS
FEB 11 1998
THOMAS K. KAHN
CLERK

Nos. 96-2478 and 96-3116

GABE KAIMOWITZ, an attorney pro se,

Plaintiff-Appellant,

versus

STATE OF FLORIDA, by and through Governor Lawton Chiles and Attorney General Robert A. Butterworth and their successors, employees, agents and assignees; STATE OF FLORIDA BOARD OF REGENTS; DEPARTMENT OF JUVENILE JUSTICE; FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS; FLORIDA DEPARTMENT OF CORRECTIONS, et al.

Defendants-Appellees.

On Appeal from the United States District Court for the
Northern District of Florida
(February 11, 1998)

Before COX, DUBINA, and CARNES, Circuit Judges.
BY THE COURT:

Appellant's "motion for acceptance by this court of a pleading...." is DENIED.

Appellees' motion for sanctions is GRANTED to the extent that the clerk is directed to tax double costs against the appellant for filing these frivolous appeals.

Appellant's motion for reconsideration of this Court's October 20, 1997 order is DENIED.

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

Thomas K. Kahn
Clerk

56 Forsythe Street, N.W.
Atlanta, Georgia 30303
February 19, 1998

In Replying Give
Number of Case
And Names of Parties

MEMORANDUM TO COUNSEL OR PARTIES:

RE: 96-2478 - Kaimowitz v. State of Florida
DC DKT NO.: 94-10061 CV-MMP

Please take notice that Attorneys' Fees[1] has been filed.

Any response which a party wishes to file must be received by this office on or before, (sic) after which the motion and the response will be forwarded to the court for ruling without oral argument. Copes of the court's decision will be sent to all counsel and to pro se parties.

Sincerely,
Thomas K. Kahn
THOMAS K. KAHN, Clerk

Reply To: Ola Solomon, (404) 335-6178
The above letter applies to appeals 96-2478 and 96-3116.

1--PETITIONER'S NOTE: No fees were awarded. Petitioner in fact had received $3,062 from the Defendants' Office of the Attorney General for fees and costs from withholding discovery, in Kaimowitz v. Florida Board of Regents, #96-3260-CA (Fla. 8th J.D. Alachua Co. Cir. Ct. 1996). The fees and costs were awarded on Sept. 9, 1997, and then approved by order of Feb. 12, 1998, in that action. Those state age discrimination claims were filed on Sept. 13, 1996, after Judge Paul on Sept. 12, dismissed the federal claims and closed the case in GCA #94-10061-MMP (N.D. Fla. 1994). Janice L. Jennings, esq., represented Florida in both the federal and states from January, 1996, to January, 1998.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

Kaimowitz

vs CASE NO. 94-10061 MMP

State of Florida, et al.,

REFERRAL AND ORDER

Referred to Judge Maurice Paul on January 5, 1998
Motion/Pleadings: Motion/Memorandum of Law in Support of Withdrawal of Motion to Discharge Order to Show Cause
Filed by pla on 12/30/97 Doc. #199
RESPONSES:
_____ on _____ Doc. #_____
_____ on _____ Doc. #_____

ROBERT A. MOSSING, CLERK
1 BY _____
LC (1 OR 2) Deputy Clerk: Adelita Tinaya-Miller

ORDER OF COURT

It is ORDERED this ***5 th*** day of *Jan*uary 1998,
the requested relief is *GRANTED-Hearing now set for January 12, 1998 is cancelled*--------

Maurice M. Paul,
MAURICE ~~M. PAUL~~
CHIEF UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET *1/ 5/98* By *BP* OFFICE OF CLERK
Rules 58 & 79(a) FRCP or 32(b)(1) & 55 FRCP U.S. DISTRICT
Copies mailed to: *Kaimowitz, Jennings,* CO URT
BKE, GE, Oxman, NORTH. DIST.FLA
GAINESVILLE, FLA
FILED 1998 Jan-5 PM 4:42

Sworn Statement of Richard W. Bailey

August 16, 1996

I, Richard W. Bailey, being first duly sworn, depose and say:

1. I have been a professor of English at the University of Michigan since 1965 and have over the years been asked to consult and testify on various language questions presented in litigation including contract interpretation, trade and service mark disputes, authorship attribution, and discrimination in educational programs. In this work, I have prepared reports, given sworn depositions, and testified in court.

2. My education and publications are described in the attached resumé.

3. Gabriel Kaimowitz is known to me from my work on King v. Ann Arbor School Board (473 F. Supp. 1978 at 1324), a case in which he was a plaintiff's counsel and I was an expert witness. My role in this case was to interpret dialect differences as revealed on audio tape and to report my findings on linguistic attitudes. My last personal contact with Mr. Kaimowitz was in 1981. In August 1996, he asked me to review various documents in the matter of Kaimowitz v. State of Florida.

4. These documents include the following (among others):

a. Transcript of a hearing on a motion for continuance (April 29, 1996).

b. Plaintiff's Second Amended Complaint (May 18, 1996).

c. Order of Dismissal and to Show Cause (July 30, 1996).

5. The question I have examined arises from the Hon. Maurice M. Paul's opinion that the second amended complaint is "replete with immaterial and scandalous matters that have no bearing on this action." While I cannot comment on the question of materiality in this document, I am able to offer my view on the question of "scandalous matters" and "abusive language" allegedly contained in the Second Amended Complaint. While Judge Paul gives only one example of "abusive language," he draws particular attention to the

"preliminary statement" of the Second Amended Complaint. In my expert opinion, the "preliminary statement" contains no "abusive" or "scandalous" matter whatsoever. It is, in fact, a plain chronology of the proceedings from May 2-17, 1996. Abusive language is that directed against a person and tending to demean or insult. None of the individuals mentioned in the "preliminary statement" is even characterized aside from identifying phrases such as "appeals court clerk." I find no "abusive" or "scandalous matter elsewhere in the Second Amended Complaint.

Judge Paul declares in his Order of Dismissal that the Second Amended Complaint attempts "to interject matters that have no bearing on the sole subject of the present litigation." These "matters" are not further identified, and I find nothing in the document that is not connected with Plaintiff's recital of his attempts to find employment with various government agencies. Judge Paul recites the rule that a court may strike matters from a proceeding in order to advance the progress of litigation. In striking all of the Second Amended Complaint, the court leaves the Plaintiff without a cause of action. Litigation cannot "progress" in the absence of a complaint.

Judge Paul does not identify what matters in the Second Amended Complaint are "unrelated to [the] alleged discrimination by DEFENDANTS." I am unable to identify any such "unrelated" material.

6. On the basis of my analysis, I find it impossible to identify any language in the Second Amended Complaint that are "abusive," "scandalous," or "unrelated" to the purpose of the document. *Richard W. Bailey*

Richard W. Bailey
Department of English
The University of Michigan
Ann Arbor, MI 48109-1045

Darlandez D. Fletcher
DARLANDEZ D. FLETCHER
Notary Public,
Wayne County ,Michigan
Acting in Washtenaw County, Michigan
My Commission Expires August 2, 2000

J. DANIEL KIMEL, JR., et al., Plaintiffs, v. FLORIDA BOARD OF REGENTS, Defendant

CASE NO. TCA 95-40194-MMP

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA, TALLAHASSEE DIVISION, 1996 U.S. Dist. LEXIS 7995;

9 Fla Law W. Fed. D 791

May 17, 1996. Decided

May 17, 1996. FILED. ENTERED

DISPOSITION [*1] Maxine Stern's motion for substitution (Doc. 84) GRANTED.

Defendant's motion to dismiss (Doc. 86) DENIED.

COUNSEL: For J. DANIEL KIMEL, JR., RALPH C. DOUGHERTY, BURTON W. ALTMAN, ROBERT W. BEARD, VALDALL K. BROCK, JOHN D. CALMAN, ELAINE D CANCALON, SIWO DE KLOET, JOSEPH DONOGHUE, PHILLIP DOWNS, RICHARD DUNHAM, ROBERT I. FULTON, ALICE GAAR. BRUCE GRINDAL, WILLIAM HEARD, HERMAN G. JAMES, WILLIAM LEPARULO, WILSON LO, DEBORAH MAHER, RICHARD MARISCAL, CONNIE G. MORRIS, SHARON E. NICHOLSON, LUCIA PATRICK, JOSEPH PETTIGREW, JOHN QUINE, KATHERINE SHELFER, JEROME STERN, CHARLES SWAIN, EDWARD WYNOT, PHILIP LAZARUS, RONALD MARTIN, ROBERT R MEAD DONALDSON, RICHARD P SUGG, CHARLES G MACDONALD, RICHARD L IVERSON, MAXINE STERN, on behalf of her deceased husband, Jerome Stern, plaintiffs; Thomas W. Brooks, Esq., Robert Jacob Sniffen, MEYER & BROOKS, P.A. Tallahassee, FL RICHARD GLICK, plaintiff [PRO SE] Tallahassee, FL

For STATE OF FLORIDA BOARD OF REGENTS, defendant; Peter S. Fleitman, Esq., Janice L. Jennings, ATTORNEY GENERAL'S OFFICE, Department of Legal Affairs, Tallahassee, FL

JUDGES: MAURICE M. PAUL, CHIEF JUDGE

OPINION BY: MAURICE M. PAUL

OPINION ORDER

This order comes before the Court on [*2] the following pending motions (1) Maxine Stern's motion for substitution (Doc. 84)--to which Defendant has responded (Doc. 94); and (2) Defendant's motion to dismiss (Doc. 86)--to which Plaintiff has responded (Doc. 96).

Each of these motions is addressed below:

DISCUSSION:

I. Maxine Stern's MOTION for Substitution (Doc. 84):

1996 U.S. Dist. LEXIS 7995 * 2

Maxine Stern, the wife of Plaintiff Jerome Stern, has filed a statement of fact of death of Jerome Stern (Doc. 85). Mrs. Stern represents that there will be no administration of her husband's estate, since she jointly held all property with her husband. Mrs. Stern therefore moves for substitution solely in her capacity as Jerome Stern's surviving widow. According to Defendant, spousal capacity alone is insufficient to permit substitution; instead, Defendant contends that the personal representative of Mr. Stern's estate is the appropriate person to substitute. Defendant further states that because Mr. Stern had a will and lineal descendants, Mrs. [*3] Stern should not be substituted until such time as she is appointed the administrator of Mr. Stern's estate. Defendant relies on Marcano v. Offshore Venezuela, 497 F. Supp. 204 (E.D. La. 1980) to support its conclusion that Mrs. Stern's motion should be denied.

Federal Rule of Civil Procedure 25 controls the substitution of parties, and provides that a motion under the rule "...may be made by any party or bye successors or representatives of the deceased party...." Fed. R. Civ. P. 25(a). Courts interpreting this rule have held that "the surviving spouse must either notify the Court that the estate has been distributed without being filed for probate, or she must become appointed executrix of decedent's estate, Hanover Ins Co. v. White Kitchen Square, Ltd., No. 93-1826, 1994 WL 151094, at *1 (E.D. La. 994) (emphasis added). Accord McSurely v. McClellan, 243 U.S. App D.C. 270, 753 F.2d 88, 98-99 (D. C. Cir.) cert. denied, 474 U.S. 1005, 106 S. Ct. 525, 88 L.Ed. 2d 457 (1985); Hardy v. Kaszycki & Sons Contractors, Inc., 842 F. Supp. 713, 716 (S.D.N.Y. 1993); Gronowicz v. Leonard, 109 F.R.D. 624, 626 (S.D. N.Y. 1986) Cf. Kilgore v. Bowman Transp. [*4] Inc., 87 F.R.D. 26, 27 (N.D. Ga. 1980) (individual named as executor in decedent plaintiff's will who elected statutory share rather than probating will and becoming executor of decedent's estate, was substitutable as a "proper party.").

In the case sub judice, although Mr. Stern had a will, Mrs. Stern has duly notified the Court that (1) there will be no administration of Mr. Stern's estate and (2) she jointly held all Mr. Stern's property with him. Under the authority of the foregoing line of cases, Mrs. Stern is clearly a distributee of an unprobated estate, and is accordingly entitled to be substituted in the stead of her deceased husband. Motion for substitution (Doc. 84) is GRANTED.

II. Defendant's Motion to Dismiss (Doc. 86):

Defendant has moved to dismiss Plaintiffs' claims against it under the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. § 621, predicated on the grounds of Eleventh Amendment immunity (Doc. 86). Defendant maintains that Congress did not abrogate the states' rights to Eleventh Amendment Immunity when it passed the ADEA, arguing that (1) Congress did not include express language in the Act that

it was revoking such immunity and (2)[*5] Congress did not adopt the Act pursuant to a valid exercise of power under the Fourteenth Amendment. Defendant instead contends that the Act was passed pursuant to Congress' exercise of its expansive Commerce Clause powers, citing a litany of legislative history and case law, including statutory construction under Pennhurst State School and Hospital v. Halderman, 451 U.S. 1, 101 S. Ct. 1531, 67 L. Ed. 2d 694 (1981). Defendant concludes by asserting that since the State of Florida has not consented to being sued, the Eleventh Amendment provides an absolute bar to this suit.

The Eleventh Amendment is an absolute bar to a suit for damages by an individual against a state or its agencies in federal court, Edelman v. Jordan, 415 U.S. 651, 94 S.Ct. 1347, 39 L. Ed. 2d 662 (1974). This bar applies to suits by the citizens of a state against their own state, Gamble v. HRS, 779 F.2d 1509, 1511 (11TH Cir. 1986). The Eleventh Amendment bar, however, can be lifted in two ways. First, Congress may abrogate the states' immunity via its powers under §5 of the Fourteenth Amendment. See Fitzpatrick v. Bitzer, 417 U.S. 445, 96 S. Ct. 2666, 49 L. Ed. 2d 614 (1976). Second, a state [*] may waive its Eleventh Amendment immunity and consent to suit in federal court. Edelman, 415 U.S. at 673, 94 S. Ct. at 1360-61. An examination of relevant case law demonstrates that Congress has expressly abrogated the state's Eleventh Amendment immunity to ADEA claims pursuant to its authority under § 5 of the Fourteenth Amendment.

As an initial matter, Defendant is simply wrong in implying that the absence of express language in the ADEA that Congress was abrogating the states' Eleventh Amendment immunity somehow shows that Congress did not intend to revoke such immunity. In fact, Congress expressed its intention to abrogate the state's immunity by including in the ADEA's definition of "employer" a "State and any agency or instrumentality of a State..." See 29 U.S.C. § 626(b).

Circuit courts that have considered this issue have reached similar conclusions. See, e.g. Hurd v. Pittsburg State Univ., 29 F.3d 564, 564-65 (10th Cir.), cert. denied, 115 S. Ct. 321, 130 L.Ed.2d 282 (1994); Bell v. Purdue Univ., 975 F.2d 422, 425, n. 5 (7th Cir. 1992); Santiago v. New York State Dept's of Correctional Servs., 945 F.2d 25, 31 (2d Cir. 1991), cert. denied [*7] 502 U.S. 1094, 112 S.Ct. 1168, 117 L.Ed. 2d 414 (1992); Ramirez v. Puerto Rico Fire Serv., 715 F.2d 694, 700-01 (lst Cir. 1983).

Defendant's second argument, that the ADEA was passed pursuant to Congress Commerce Clause power and not the Fourteenth Amendment is also without merit n1 **[INSERT n1 here]**--Defendant makes this argument in an attempt to show that Congress lacked the power to abrogate the states' Eleventh Amendment immunity to ADEA claims. According to Defendant, the Supreme Court's recent narrowing of congressional Commerce Clause power [see Seminole Tribe of Florida v. Florida, 116 S.Ct. 1114 (1996)] precludes Congress from revoking such immunity under its Commerce Clause Powers. While the Supreme Court has held that the ADEA was a valid exercise of Congress' powers under the Commerce Clause, the Court also declined to decide whether the ADEA could also be upheld under §5 of the Fourteenth Amendment, EEOC v. Wyoming, 460 U.S. 226, 243, 103 S.Ct. 1054, 1064, 75 L. Ed 2d 18 (1983). Nevertheless, the majority of circuit courts that have addressed the issue have concluded that the ADEA was also a proper exercise of Congressional authority under the Fourteenth Amendment. See, e.g. Ramirez, 715 F.2d at 697-700; Arritt v. Grisell, 567 F.2d 1267, 1271 (4th Cir.. 1977); Davidson v. Board of Governors, 920 F.2d 441, 443 (7th Cir. 1990); EEOC v. Wyoming Retirement Sys.., 771 F.2d 1425, 1428 & n. 1 (10th Cir. 1985). District courts within the Eleventh Circuit have reached similar conclusions. See, e.g., Griswold v. Alabama Dep't Indus. Relations, 903 F. Supp. [*8] 1492, 1496 (M.D. Ala. 1995); Brogdon v. Alabama Dept. of

Econ. & Comm. Aff., 864 F. Supp. 1161, 1165 (M.D. Ala. 1994).

Consequently, Defendant's motion to dismiss on the basis of Eleventh Amendment immunity (Doc. 86) is DENIED.

Accordingly, it is hereby

ORDERED AND ADJUDGED

1. Maxine Stern's motion for substitution (Doc. 84) is GRANTED. The clerk is directed to substitute Maxine Stern as a party-plaintiff for her deceased husband, Jerome Stern.

2. Defendant's motion to dismiss (Doc. 86) is DENIED.

DONE AND ORDERED this 17th day of May, 1996.

MAURICE M. PAUL, CHIEF JUDGE

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

WILLIAM K. SUTER
CLERK OF THE COURT

AREA CODE 202
479-3011

May 18, 1998

Mr. Gabe Kaimowitz
P.O. Box 140119
Gainesville, FL 32614

Re: Gabe Kaimowitz
v. United States District Court for
the Northern District of Florida
Application No. A-862

Dear Mr. Kaimowitz:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Kennedy, who on May 18, 1998, extended the time to and including June 12, 1998.

This letter has been sent to those designated on the attached notification list.

Sincerely,
WILLIAM K. SUTER, Clerk
By *GBJ*
Gail B. Johnson
Assistant Clerk

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

WILLIAM K. SUTER
CLERK OF THE COURT

AREA CODE 202
479-3011

NOTIFICATION LIST

Mr. Gabe Kaimowitz
P.O. Box 140119
Gainesville, FL 32614

Hon. Seth P. Waxman
Solicitor General
Department of Justice
Washington, DC 20530

Clerk
United States Court of Appeals for
the Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, GA 30303

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

WILLIAM K. SUTER
CLERK OF THE COURT

AREA CODE 202
479-3011

May 19, 1998

Mr. Gabe Kaimowitz
P.O. Box 140119
Gainesville, FL 32614

Re: Gabe Kaimowitz
v. United States District Court for
the Northern District of Florida
Application No. A-862

Dear Mr. Kaimowitz:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Kennedy, who on May 19, 1998, extended the time to and including June 12, 1998.

This letter has been sent to those designated on the attached notification list.

Sincerely,
WILLIAM K. SUTER, Clerk
By *GBJ*
Gail B. Johnson
Assistant Clerk

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

WILLIAM K. SUTER
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NOTIFICATION LIST

Mr. Gabe Kaimowitz
P.O. Box 140119
Gainesville, FL 32614

Hon. Seth P. Waxman
Solicitor General
Department of Justice
Washington, DC 20530

Clerk
United States Court of Appeals for
the Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, GA 30303

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May 19, 1998

Mr. Gabe Kaimowitz
P.O. Box 140119
Gainesville, FL 32614

Re: Gabe Kaimowitz
v. United States District Court for
the Northern District of Florida
Application No. A-862

Dear Mr. Kaimowitz:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Kennedy, who on May 19, 1998, extended the time to and including June 12, 1998.

This letter has been sent to those designated on the attached notification list.

Sincerely,
WILLIAM K. SUTER, Clerk
By *GBJ*
Gail B. Johnson
Assistant Clerk

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